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In the Supreme Court of the United States

OCTOBER TERM, 1974

PETER PREISER, ET AL., PETITIONERS

v.

JAMES NEWKIRK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The United States will address the question whether the Due Process Clause always requires notice and opportunity for hearing before a prisoner may be transferred from one place of incarceration to another.[1]

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[1] When this Court granted certiorari, it directed the parties to brief the question of mootness. We do not address that issue in this brief.

INTEREST OF THE UNITED STATES

This case presents questions regarding the procedures prison administrators must follow when deciding to move inmates from one place of incarceration to another. Although the case involves directly only the practices of prisons in a single State, the Court's decision on the constitutional question will have a direct impact on the existing practices and procedures for management and control of inmates in all other prison systems, including the federal prison system.

In accordance with the statutory mandate to operate "an integrated system" of institutions to "assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions" (18 U.S.C. 4081), the Federal Bureau of Prisons presently maintains 49 prisons of various types throughout the country.[2] In addition to these prisons it maintains numerous halfway houses and has contracts with state or private insti-

[2] These consist of six maximum security institutions, six intermediate term adult institutions, thirteen short term adult institutions, seven young adult institutions, three juvenile facilities, four institutions for female offenders, nine community treatment centers, and one intensive medical treatment facility. In addition, the Bureau of Prisons administers prison programs, differing from one institution to another, according to the needs of the inmate populations.

tutions for temporary custody of prisoners and for specialized remedial programs.

In fiscal 1974, 13,445 individuals were committed by the federal courts to the custody of the Attorney General and underwent classification study.[3] After this study is completed, each individual is sent or transferred on an initial basis to the institution deemed most appropriate for him or her. In addition to these "initial" classification and transfer decisions, approximately 11,306 inmates were transferred during the year from one federal prison to another.[4] Decisions similar to transfer decisions are made when individuals are placed in, or removed from, facilities operating under contract with the Bureau. During the year 10,130 prisoners were released on furloughs (some to contract facilities), and 9,766 prisoners were received back into prisons from furloughs. Finally, prisoners routinely are transferred within the same penal institution or assigned to different work or rehabilitation programs; many of these decisions have consequences to the inmate similar to those experienced when he is transferred between institutions.

[3] This statistical information has been provided by the Bureau of Prisons. Although 13,445 individuals were formally committed, a total of 17,146 individuals were received in the federal prisons from all sources, and classification reports would have been prepared on each of them.

[4] These transfers involved a substantial proportion of the total inmate population of approximately 23,000. Approximately 770 of the transfers were effected because the inmate had not adjusted to an institution, and 570 were to provide "closer custody".

Resolution of the issues in this case may have a substantial impact on the procedures that must be used to effect these initial classification, transfer, and assignment decisions,[5] and a ruling requiring all prison transfer decisions to be made according to a particular set of rules or an inflexible mold may both seriously interfere with the orderly administration of federal prisons and inhibit the continuing development and revision by the Bureau of its transfer procedures.[6]

STATEMENT

On July 5, 1972, respondent and three other inmates in the New York State prison system brought an action under 42 U.S.C. 1983 seeking declaratory and injunctive relief from allegedly unconstitutional treatment arising when they were transferred from Wallkill Correctional Facility, a medium security New York State prison, to maximum security prisons also located in and operated by New York State. The complaint, as amended, asserted that the transfers were defective because they had been carried out without written notice of charges and without a hearing before an impartial tribunal at which they would have the right to call and confront witnesses and be represented by counsel. The complaint also asserted that the transfers violated the Equal Protection Clause because the transferred prisoners had not been afforded the same administrative procedures granted to inmates who faced disciplinary punishment within the prison. Finally, the complaint alleged that the transfers were punishment imposed solely because of the exercise of First and Sixth Amendment rights. The complaint sought a declaratory judgment that the transfers were improper, an injunction ordering their return to Wallkill, expungement from their prison records of all references to the transfer, and the prohibition of future transfers without an adequate hearing.

1. At a trial held in November 1972, respondent testified that he had been an inmate of the New York prison system since his conviction for second degree murder in 1962 and that he had been held in four different state correctional facilities prior to his transfer to Wallkill, a unique prison that permits its inmates to live in rooms rather than cells and provides "maximum free time and freedom of movement" (Pet. App. 21-22).[7] At Wallkill respondent took instruction in automobile repair, attended classes in mathematics, history and English, and during his leisure time was able to play musical instruments

[5] Congress has enacted numerous statutes providing for the classification and transfer of prisoners within the federal system. Those statutes, the application of which could be affected by the Court's decision in this case, are set out in Appendix A, *infra*.

[6] The Bureau has developed comprehensive procedural guidelines for classification and transfer decisions, including transfers used for disciplinary purposes. These guidelines are not generally available, and we have, therefore, set them out in Appendices B-E, *infra*.

[7] This summary of facts is taken from the opinion of the court of appeals.

and pursue other artistic interests. Respondent also drove a truck and was, at times, permitted to leave the prison grounds as part of his employment.

Some time prior to June 1972 several Wallkill inmates began circulating petitions to form an inmates' union. Respondent testified that he became interested in the concept of the union and signed a union constitution on May 31, 1972, and a union petition on June 2, 1972. However, he stated that he had no further contact with the union prior to his transfer from Wallkill on June 8, 1972.

The circulation of petitions to form a union was opposed by members of the elected Inmate Liaison Committee, which had general responsibility for processing inmate grievances. On June 2, 1972, the Committee held a meeting of inmates at which it disclaimed any support for the union. The discussions at this meeting, although vociferous, did not lead to violence. Nevertheless, the officer in charge of Wallkill on that evening became concerned about a possible threat to the stability of the prison and telephoned reports to Prison Superintendent Butler, a petitioner here. The officer also prepared a written report for the Assistant Deputy Superintendent in which, based on what other officers had told him, he identified respondent as one of the inmates who had been canvassing for the union. On Tuesday, June 6, the Assistant Deputy Superintendent recommended to Superintendent Butler that eight inmates, including respondent, be transferred from Wallkill.

Superintendent Butler agreed, and the transfers

were made on June 8 and 9. The eight inmates were not told the reason for the transfer, nor were they afforded any opportunity to respond to charges or to contest the action. Respondent was transferred to Clinton Correctional Facility, an institution slightly more "secure" than Wallkill.[8] At Clinton he was placed in a cell openable only by a guard and was unable to engage in many of the activities he had pursued at Wallkill. Respondent testified that at Clinton he worked seven days a week, often for 13 or 14 hours per day; he also stated that visits by his family were more difficult, because Clinton is located farther from his family's home in New York City than is Wallkill.[9]

Superintendent Butler testified that he normally did not oppose the circulation of petitions at Wallkill, but that after he conferred with his staff he became concerned about the union petition because of the antagonistic positions of the Inmate Liaison Committee and the other inmates. He also testified that he did not institute any disciplinary proceedings against the transferred inmates and that he did not, by transferring them, cause them to lose any good time, to be placed in segregated confinement, or to be treated specially at the receiving institutions.

2. The district court granted declaratory relief but declined to issue an injunction, because respond-

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[8] Because Wallkill is a "unique" prison he could not have been transferred to a comparable institution.

[9] Wallkill is located approximately 80 miles from New York City, and Clinton is approximately 300 miles from the city.

ent by that time had been returned to Wallkill by the prison authorities (Pet. App. 36). The court stated in its opinion that in the circumstances of the case "transfer was as much a disciplinary measure as others for which an administrative hearing is provided in the prison rules" (Pet. App. 42). Because it viewed the transfer as a disciplinary measure, and because it believed that respondent had been subjected to a "significant loss" (*ibid.*), the district court concluded that notice and opportunity for hearing were required. The court stated (*id.* at 41):

> [I]t is quite evident that to be located at Wallkill is a status prized by inmates. The advantages of the facility over other correctional facilities are numerous. Whether it is deemed a right or a privilege, the interest in continuing to be situated there is sufficiently great that transfer in direct response to his activity deserves some sort of "due" process * * *.

3. The court of appeals expressly rejected an argument that any hearing requirement should be confined to transfers carried out as punishment (Pet. App. 25). Instead, it reasoned that all transfers from medium security institutions to maximum security institutions constrict the amenities available to an inmate and consequently constitute "grievous loss" requiring the procedural protection afforded by notice and hearings. The court stated (Pet. App. 26-27):

> In our view [petitioners'] position gives insufficient consideration to the very real loss that an inmate may sufer [sic] even when his transfer is not part of formal disciplinary proceedings and

> has no adverse parole consequences. It also overlooks the danger that a transfer, when based on rumor or "confidential" information about an inmate's behavior, past or planned, may be arbitrary and unjustified by the facts. These factors, the adverse consequences to the prisoner and the chance of error, are the principal elements to be considered in determining what process is due the transferred prisoner, rather than the label put on the transfer. Where the prisoner suffers substantial loss as a result of the transfer he is entitled to the basic elements of rudimentary due process, i.e., notice and an opportunity to be heard. [Citations omitted.] See also *Landman* v. *Royster*, 333 F. Supp. 621, 645 (E.D. Va. 1971) (questioning distinction between deprivations constituting "punishment" and those presented as techniques for the maintenance of "control" or "security"). While no formal disciplinary proceedings were involved in the present case the district court found that Newkirk was deprived of living conditions and job and training opportunities for which he had waited for six years and which he was apparently eager to retain. Since this was a substantial loss he was entitled to know the reasons for the transfer, to be heard, and to be permitted to demonstrate the existence of factual errors in the basis for the discharge.

Once the court determined that the transfer entailed a sufficient quantum of loss, it applied a further principle that "fundamental fairness" (Pet. App. 28) always requires that such loss be imposed only after the facts supporting the deprivation have been

"rationally determined" (*ibid.*). Because the court believed this could be done only in an adversarial hearing, it stated that such a hearing always is required regardless of the reason for the transfer (*id.* at 28, n. 6).

INTRODUCTION AND SUMMARY OF ARGUMENT

The court of appeals has instituted an inflexible program of trial-type hearings for all transfers from one prison to another, more secure institution, regardless of the reason for the transfer, the detriment to a particular inmate, or the needs of prison administration. Moreover, subsequent to the decision in the instant case, another panel of the Second Circuit, in *United States ex rel. Haymes* v. *Montanye*, No. 74-1208, decided October 4, 1974, petition for a writ of certiorari pending, No. 74-520, extended the requirement of trial-type hearings to all transfers between institutions, whether or not conditions of confinement are altered by the transfer. The *Haymes* panel held that "the mere fact of dislocation" is grievous loss sufficient to require notice and a hearing (Pet. No. 74-520 App. 10a).

We submit that these decisions, whether or not their holdings are correct as applied to their particular facts, failed to analyze the interests involved in prison transfers from the point of view of both the desires of the inmate and the goals and necessities of prison administration. Because the court looked solely at the alleged injury to the prisoner's

interests,[10] it formulated a rule that is unnecessarily broad and rigid, with a sweep unsupported by the Fifth and Fourteenth Amendments.

The decisions as written compel prison administrators to accord hearings to all transferees whether or not any substantial interest of the inmate is affected and whether or not such a hearing would deal with facts relevant to the decision to carry out such a transfer. Because a substantial portion of all federal inmates are transferred each year, this decision, if the same approach is adopted by this Court, will have widespread effect and could significantly interfere with the functioning of the federal prison system. Moreover, there would appear to be little rational basis for distinction between the effect on prison inmates of a decision to transfer them to another facility and the impact upon them of decisions regarding initial placement, furlough, and reclassification within an institution. If the rationale of the court below is expanded to include a requirement of hearings in all of these situations, it will work a

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[10] The *Haymes* court reached this conclusion even though it acknowledged that transfers often are not accompanied by any deprivations or changes in circumstance other than the change in location, and even though some transfers are predicated on reasons, such as overcrowding, that are so unrelated to the inmate's behavior that "the decision whether to transfer may not be advanced in any way by providing notice and a hearing to the transferee" (Pet. No. 74-520 App. 6a). Surely there is something seriously wrong with a rule that requires diversion of limited prison system resources to hearings that "may not * * * advance * * * in any way" the objective of making sensible transfer decisions.

substantial change in the relationship between the inmate and the prison authorities. A change of this sort, which will convert many if not most decisions affecting an inmate into adversarial struggles between the inmate and his custodians, could have far-reaching effects on the usefulness of the prison both as a place of rehabilitation and as a place of confinement. Indeed, the provision of administrative hearings threatens, under the impact of decisions such as these, to become the principal function of prison administrators.

Because of a combination of factors—concern about the potential for violence in response to notification of transfer, the certainty of considerable administrative burden, and the unknown effects that proliferating hearing requirements would have in changing the posture of inmates vis-a-vis their custodians—the Bureau of Prisons (which has discretion under 18 U.S.C. 4081 and 4082(b) over the placement and transfer of inmates) has altered and experimented with its transfer procedures only slowly. Over an extended period of time the Bureau has revised its regulations and procedures to provide inmates with the opportunity to participate either directly or indirectly in all placement and transfer decisions. Current procedures may be summarized briefly as follows: [11] After an individual has been transported to an initial place of confinement, the Bureau under-

[11] A more complete summary is set forth at pp. 36-42, *infra*, and the Bureau's relevant policy statements are reprinted as Appendices B-E to this brief.

takes extensive studies, including multiple interviews with and tests of the inmate, in order to understand his correctional needs. On the basis of the extensive information gathered by this procedure, a classification committee decides on the appropriate place of confinement, to which he is transferred. He is then retransferred only when, in the opinion of the warden, his rehabilitation or safety, or other proper penological goals or institutional needs, require a change. Typically, when a transfer is being considered, a progress report or special progress report will be prepared, to which the inmate can contribute and which he can inspect after its preparation. Transfers also may be used as punishment, but Bureau procedures call for the inmate to receive notice and a full *Wolff*-type hearing, with the right of administrative appeal, when punishment is involved.

We do not insist that the rules and procedures now in use are the best possible procedures from the point of view of either the inmates or prison officials. But we do suggest that the concerns of prison officials are important and that it would be inappropriate for a court, in the name of procedural due process, suddenly to alter the balance that has been reached through this continuing process of revision and to substitute, in its stead, an inflexible regimen of constitutional rules. We submit that, however great may be the wisdom of the rules promulgated by the court below, they are not required by the Constitution except in cases arguably involving the punishment of an inmate for misconduct in the prison.

I

A threshhold deficiency in the analysis of the court below is its failure to ascertain the extent, if any, to which an inmate's current living conditions are a "liberty" or "property" interest within the meaning of the Fifth Amendment. Only if "liberty" or "property" is involved is it necessary to undertake the next level of inquiry: whether the loss is so great that it is "grievous." The court below, however, addressed only the subsidiary "grievous loss" question. This incorrect approach led it almost inevitably to an incorrect rule.

We agree with the court of appeals that, when prison officials deprive an inmate of a significant portion of the small stock of amenities he possesses, the difference is likely to be "felt" as "grievous loss." However, grievous loss may be imposed without the necessity of notice and hearing when what is lost is neither "liberty" nor "property." For example, a university may decline to rehire an untenured teacher, even though the "loss" of employment would have been grievous loss sufficient to trigger the requirement of notice and a hearing if there were a property interest in continued employment. Compare *Board of Regents* v. *Roth*, 408 U.S. 564, with *Perry* v. *Sindermann*, 408 U.S. 593.

We submit that an inmate does not acquire either a liberty interest or a property interest, or a "legitimate claim of entitlement" (*Roth*, *supra*, 408 U.S. at 577) to such an interest, merely by being placed by his custodian in a particular institution. His initial placement in an institution came about only because of an exercise of administrative discretion; the inmate is not entitled to compel prison officials to admit him to a specific institution, and no state of events can guarantee his continued residence there. Nor, in the ordinary case of imprisonment, has any level of government, by statute or regulation, made any promise to the inmate, either express or implied, that he will be afforded continued residence in any particular institution. Quite the contrary, the very fact of his conviction for a crime, and the legitimate placement of his person into the hands of a custodian who will be responsible for his safekeeping and the supervision of the most intimate details of his life, removes from the prisoner any legitimate expectation that he will be able to control the conditions of his confinement. Any expectation of permanence in conditions is generated by the inmate himself, not by his custodians.

Nor does the Due Process Clause itself create such a claim of entitlement. The conviction and authorized incarceration of any person entitles his custodian to expose him to at least that range of custodial conditions reasonably anticipated by the judge pronouncing the sentence, so long as those conditions do not independently violate the Eighth Amendment. While we do not suggest that it is desirable that transfer decisions be made arbitrarily or on the basis of mistaken factual assumptions, subjection of prison inmates to custodial decisions that in some instances are not fully responsive to their situation, while un-

pleasant, is not barbaric, uncivilized, or rejected by the modern community. The risk of occasional subjection to arbitrariness is to some extent inherent in the custodial relationship, and the existence of that inherent risk does not by itself create a right in the prisoner to the provision of procedural due process.

We submit, therefore, that an inmate does not ordinarily possess a legitimate claim of entitlement to remain in the particular conditions of confinement into which he temporarily may be placed. Because his removal into another institution does not deprive him of liberty or property, he is not entitled to notice and a hearing even though the change in circumstances may be perceived as "grievous loss." However, the constitutional analysis may be different when a transfer is made for punitive purposes. In such cases, it could be argued that the inmate has a legitimate expectation that the conditions of his incarceration will not be substantially degraded for reasons unrelated to the ordinary consequences of his initial commitment. The Court need not here decide the broad question whether the fact that a transfer is made for punitive purposes, standing alone, sufficiently alters the constitutional equation so that a "legitimate claim of entitlement" exists, since such a claim would arise where procedural requirements are imposed by regulation. Both federal and New York prison regulations provide that when an inmate is punished for rule infractions subsequent to his conviction, he is entitled to notice and a hearing. Thus, the regulations promulgated by prison administra-

tors here, similar to the regulations in *Wolff* v. *McDonnell*, No. 73-679, decided June 26, 1974, create a legitimate claim of entitlement not to be punished unless the facts justifying such punishment are present. In this respect, we agree with the court below that the "label" attached to the transfer by prison officials is irrelevant; instead, a functional analysis is necessary in order to isolate those transfers that are punitive or the equivalent of punishment and hence involve a legitimate claim of entitlement.

II

Even when the prisoner arguably has been deprived of a liberty or property interest, it is necessary to examine all interests at stake in order to determine how much "process" is "due." We submit that this interest analysis, too, requires administrative transfers to be treated differently from punitive transfers.

The constitutional balance for prison discipline has been struck in *Wolff* v. *McDonnell*, *supra*, and we see no difference between in-prison punishment and punishment effected by transfer that would justify different treatment for due process purposes. In either case the inmate has been deprived of a legitimate claim of entitlement, and the *Wolff* procedures should be used if he can establish that he has suffered "grievous loss." However, *Wolff* carefully confined its analysis to punitive deprivations, and we believe that countervailing factors compel a different result for deprivations that occur as a result of nonpunitive decisions.

The range of reasons for which an inmate may be transferred is quite broad: these include the initial classification decision to transfer an inmate to an institution apparently most suitable for the inmate; placement in an institution nearer the offender's release point; placement in an institution more appropriate to the length of time remaining to be served; placement in an institution containing more appropriate training or medical facilities; removal from an institution to which adjustment has been poor; transfers to reduce excessive population or increase deficient population; removal for the safety of the transferred inmate or other inmates; *etc.* Many of these causes for transfer do not turn upon objective inmate-specific facts of the sort most appropriate to trial-type determination. Some of them require only the determination of "legislative" facts about which the inmate could offer little of importance at such a hearing. Others may offer appropriate occasions for entertaining the inmate's views, but these may be obtained without a formal adversarial hearing in every case. Other transfers are made because of suspicions that are incapable of objective proof in the particular case but nevertheless justify action. In sum, there is no need for a rigid, uniform approach to all of these transfers, nor is one warranted.

Of course, even in many of the foregoing categories, inmate-specific facts may to some extent be relevant to the transfer decision, and hearings might on occasion operate to prevent a transfer prompted in part by a mistaken view as to those facts. But it

is the judgment of prison authorities that the institutional costs of providing procedures to reduce the risks of mistakes of this sort probably outweighs the benefits to be derived from such procedures. We believe that courts should proceed with considerable caution before overriding these judgments and imposing constitutional (and therefore unalterable) procedural requirements on this kind of custodial decision making.

Moreover, provision of a trial-type hearing on every transfer occasion does not necessarily increase the welfare of inmates as a group. It has been contended with some cogency that converting the relationship between the inmate and his custodian into a formally "adversarial" one may interfere with the rehabilitative goal of these institutions and make prison life more acrimonious than is otherwise necessary. Notice of the transfer may increase the possibility that inmates, disappointed by the prospect and despairing of their ability to prevent it, may act violently toward their custodians or other inmates. Finally, to the extent a hearing will operate to keep within a particular prison one who otherwise would leave, it also will keep out of the presumably "more desirable" institution one who otherwise would gain entry: one inmate's gain is another's loss. Accordingly, where the purpose of the transfer is not to impose such a loss, but simply to allocate the inmates to the institution that (for whatever reason) is judged by administrators of the prison system to be most appropriate for them, the Due Process Clause

does not require pre-transfer hearings of the kind required under *Wolff* for punishment.

III

We submit that the Due Process Clause is fully satisfied if notice and opportunity for a *Wolff* hearing is afforded whenever an inmate is transferred for purposes of punishment. We acknowledge that this basic rule may at times prove difficult to administer and create the possibility of subterfuge by label, and that difficult cases arise when a transfer is supported by past incidents of misbehavior that could have been, but were not, the subject of in-prison discipline. However, the Constitution does not require this Court to presume that officials will engage in such subterfuge. The difficult problems of line drawing can be overcome.

Whether or not a *Wolff*-type procedure is followed with every transfer, the inmate is at liberty to bring an action alleging that the transfer was undertaken for a prohibited reason, such as religion or race. No transfer may be based on such a prohibited reason. But the possibility that this prohibition may be evaded does not compel officials to hold a hearing prior to every transfer. Only if the inmate can establish a prima facie case of use of such a reason are the authorities required to justify their actions. Similarly, we submit that transfer without a hearing for the purpose of punishment may be viewed as a "prohibited reason". The inmate could attempt to establish a prima facie case that the transfer was

carried out soon after an incident that could have been the subject of discipline. If such a case can be established, prison officials can show in response that the transfer was not what it appears to be.

But it is unnecessary for prison officials to hold a hearing in every instance; the difficulties in drawing a line between those cases in which the Constitution requires a hearing and those cases in which it does not should not be overcome by extending the requirement of a hearing to every case. The courts should not impose a substantial requirement solely in order to diminish the necessity of judicial line-drawing. In any event, to the extent the line is a difficult one to draw or maintain, the prospect of repeated judicial challenge will be an incentive for prison officials to extend the availability of hearings to borderline cases. This compromise by those officials charged with the administration of the prisons, and most knowledgable about the effects of their decisions on the functioning of those institutions, is a more satisfactory solution that an unnecessarily broad and rigid rule of constitutional proportions applied indiscriminately to all transfer decisions.

ARGUMENT

I. AN INMATE IS NOT DEPRIVED OF LIBERTY OR PROPERTY WHEN TRANSFERRED FOR NONPUNITIVE REASONS

A. Due Process Requires Notice And Opportunity For Hearing Only When An Individual Is Deprived Of A Benefit Conditioned By Law On The Existence Of A Controvertible Fact

A threshhold difficulty in the analysis of the court below is its failure to consider the nature, if any, of the inmate's "liberty" or "property" interest in the maintenance of the particular conditions of confinement into which he has been placed. It is undisputed that the Due Process Clause applies only to deprivations of liberty or property. *Board of Regents* v. *Roth*, *supra*; *Cafeteria Workers* v. *McElroy*, 367 U.S. 886. Consequently, even though loss of the opportunity for future employment in those cases may have been "felt" as "grievous loss", the Due Process Clause did not require any procedural formalities.

In *Morrissey* v. *Brewer*, 408 U.S. 471, 480-482, the Court first determined that revocation of parole deprives an individual "of the conditional liberty properly dependent on observance of special parole restrictions" (*id.* at 480). After finding such a liberty interest, the Court proceeded to the question of how much process is due. In similar fashion, the Due Process Clause requires notice and opportunity for a hearing before an inmate may be transferred from one place of confinement to another only if the transfer deprives him of either "liberty" or "property" within the meaning of the Fifth Amendment. The suppressed assumption of the court of appeals was that, whenever a "grievous loss" occurs, the loss must have been occasioned by the deprivation of such an interest. That assumption is incorrect.

"Grievous loss" is felt by an individual whenever he is subjectively disappointed by the inability to retain in the future what he had possessed in the past, or to obtain what he expected to have in the future. In either form, it can be occasioned as easily by an expectation as by an impact upon a liberty or property interest. But the Fifth Amendment does not protect a "unilateral expectation"; an individual must have a "legitimate claim of entitlement" before his expectations are constitutionally shielded. *Roth*, *supra*, 408 U.S. at 577. The opinion below begged the question by proceeding as if such a legitimate claim of entitlement is involved in all prison transfers simply because "grievous loss" may be felt.[12]

Although this Court has never defined the conditions that create a legitimate claim of entitlement, recent due process cases consistently require, at a minimum, the existence of some rule that, if a certain state of facts exists, the government must take specified action. In other words, some independent legal force must remove or curtail governmental dis-

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[12] The same bootstrapping process is used in the otherwise helpful Note, *Procedural Due Process in the Involuntary Institutional Transfer of Prisoners*, 60 Va. L. Rev. 333 (1974).

cretion. See *Arnett* v. *Kennedy*, 416 U.S. 134, 181-182 (opinion of White, J.).

A reasonable definition of a legitimate claim of entitlement would be that

> [a]n entitlement is a legally enforceable interest in receiving a governmentally conferred benefit, the initial receipt or the termination of which is conditioned upon the existence of a controvertible and controverted fact.

Geneva Towers Tenants Organization v. *Federated Mortgage Investors*, 504 F.2d 483, 495-496 (C.A. 9) (Hufstedler, J., dissenting). The interest may be created by the common law (*Perry* v. *Sindermann*, *supra* (implied contract); *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600 (contract)); by statute (*Goldberg* v. *Kelly*, 397 U.S. 254; *Arnett* v. *Kennedy*, *supra*; *Morrissey* v. *Brewer*, *supra*; *Bell* v. *Burson*, 402 U.S. 535); or by administrative regulation (*Wolff* v. *McDonnell*, *supra* (regulation providing that loss of good time or segregation be inflicted only as punitive sanctions)). But in all of these cases officials either were required by extrinsic rules, or had obligated themselves by regulation, to take certain specified actions only in response to a specific set of facts. Under such circumstances, the Court concluded that notice and opportunity for hearing were required by the Due Process Clause so that the affected individual could present to the responsible official his version of these controvertible facts. However, as we next demonstrate, these conditions do not exist in the case of prison transfers, and therefore a prisoner has no

claim of entitlement to the continuation of his current conditions of confinement.

B. An Inmate Does Not Have Either A Liberty Or A Property Interest In The Continuation Of Any Particular Conditions Of Confinment

It is difficult, in the context of imprisonment, to distinguish a "liberty" interest from a "property" interest, and we do not here attempt to differentiate the interests; it will be sufficient for the analysis here to refer to either or both as a "legitimate claim of entitlement."

We submit that any such claim of entitlement by an inmate to the benefits of his immediate surroundings is properly taken from him by the judgment convicting him of a crime and the sentence of imprisonment. What remains is not liberty—for that has been withdrawn—but the conditions surrounding the prisoner's lack of liberty. The sentence of imprisonment places him in the hands of those who will be his custodians for the purposes of punishing him for his crime, detaining him so that he cannot harm others, and, if possible, rehabilitating him so that when he is released he will not resume the conduct that led to his incarceration. See Packer, *The Limits of the Criminal Sanction* 35-70 (1968). Once he has been convicted he may lawfully be subjected to severe restraints including, if necessary, maximum security confinement and administrative isolation, so long as the confinement is not cruel and unusual punishment within the prohibition of the Eighth Amendment. All of this is, we submit, a necessary concomitant of in-

carceration. See *Wolff*, *supra*, slip op. at 15; *Pell* v. *Procunier*, No. 73-754, decided June 24, 1974, slip op. 4-6; *Price* v. *Johnston*, 334 U.S. 266, 285.

Once he has been confined, no particular set of facts entitles the inmate to a particular place or particular conditions of confinement. His custodian may send the prisoner to any institution that, in the best judgment of the custodian, will advance the purposes for which the inmate has been imprisoned and the needs of the penal system.[13] An inmate cannot claim an entitlement to be free of such control by the custodian, because it was *exactly* that claim that the judgment of conviction stripped from the inmate. The governing federal statutes, 18 U.S.C. 4081 and 4082(b) (App. A, *infra*, pp. 1a-2a) expressly grant to federal prison officials full discretion over the placement and transfer of prisoners. Thus, not only is there no positive source in statute, regulation, or common law for a legitimate claim of entitlement in this connection, but Congress has specifically declared that, for federal prisoners, transfers shall *not* be conditioned upon any particular state of facts.

Because no set of facts entitles an inmate to placement in any particular institution, he does not acquire a legitimate claim of entitlement to remain in any particular institution. His desire to do so is the paradigm case of the "unilateral expectation" (*Roth*, *supra*, 408 U.S. at 577) for which the Due Process Clause provides no procedural protection.[14] The inmate acquires no claim of entitlement to continuation of the *status quo* unless that claim has been established by statute or rule, and, unless the transfer is punitive, there is no such statute or rule. The sole source of the expectation of continuity of his current conditions of confinement is the inmate himself.

[13] Subject, of course, to statutes or regulations that control the exercise of this discretion. Statutes such as the Narcotics Addicts Rehabilitation Act, for example, could create a legitimate claim of entitlement enforceable, in most circumstances, by an inmate. However, 18 U.S.C. 4081 and 4082(b) (App. A, *infra*, pp. 1a-2a) vest federal prison officials with full discretion concerning an ordinary inmate's place of confinement.

C. Neither The Due Process Clause Nor The Eighth Amendment Confers A Substantive Entitlement To Continuation Of A Prisoner's *Status Quo*

Because neither statute nor rule establishes a legitimate claim of entitlement to continuation of any particular conditions of confinement, that claim, if it were to exist at all, would have to be found in the Constitution itself, either as some form of "fundamental fairness" or as part of the prohibition against cruel and unusual punishments. We submit that neither concept sets up such a substantive claim of entitlement. Cf. *Roth*, *supra*, 408 U.S. at 577.

The argument, whether based on the Fifth or the

[14] This does not, of course, mean that prison officials are free to transfer an inmate for an invidious or prohibited reason. The remedy for such a forbidden action, however, is a suit or protest by the inmate, rather than a program of pre-transfer hearings. See *Roth*, *supra*, 408 U.S. at 575; see also the comprehensive opinion in *Beatham* v. *Manson*, 369 F. Supp. 783, 791-792 (D. Conn.).

Eighth Amendment, would have to be that the Constitution substantively requires either (1) that a prisoner be subjected to conditions of confinement no more severe than are absolutely necessary to restrain and rehabilitate him, so that transfer of an inmate to "unnecessarily severe" incarceration is forbidden, or (2) that freedom from arbitrariness or risk of factual error in making decisions is itself a "liberty" interest protected by the Constitution. Neither of these approaches is persuasive.[15]

The first approach—that the Constitution compels minimum necessary restraints—is inconsistent with the idea that incarceration is, among other things, a form of punishment. Such confinement legitimately may be made uncomfortable both to punish the offender and to deter others from committing similar crimes. See, *e.g.*, *Pell* v. *Procunier*, *supra*; *United States* v. *Foss*, 501 F.2d 522 (C.A. 1).[16] See generally Zimring & Hawkins, *Deterrence* (1973).

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[15] A third possible approach is that some conditions of confinement are themselves cruel and unusual punishment. But such conditions could not be imposed whether or not notice and opportunity for hearing were afforded. Moreover, because the lower federal courts have unanimously held that administrative segregation is not *per se* cruel and unusual punishment, see, *e.g.*, *O'Brien* v. *Moriarty*, 489 F.2d 941 (C.A. 1), *a fortiori* the placement of an individual in a maximum security institution is not cruel and unusual. Cf. Comment, *The Role of the Eighth Amendment in Prison Reform*, 38 U. Chi. L. Rev. 647 (1971).

[16] See also *Williams* v. *New York*, 337 U.S. 241, 248; *Powell* v. *Texas*, 392 U.S. 514, 530.

The severity of the punishment is determined by a combination of factors, foremost among which are the length of the incarceration and the quality of the conditions of confinement. The sentencing tribunal is presently free to select, without restraint other than statutory maxima, the length-of-incarceration component. *Dorszynski* v. *United States*, No. 73-5284, decided June 26, 1974. It would make little sense, given the sentencing court's ability to control the length of incarceration, for this Court to hold that the "conditions of confinement" cannot contain a punishment component.

In any event, social science research has not yet progressed to the point where we can say with any confidence what is the "minimum" necessary restraint to be imposed on an individual. The inmate's reactions to his confinement, his future "dangerousness", and the optimum conditions for his rehabilitation are all so speculative that it would be practically impossible to supervise a "minimum restraints" rule. The courts would be compelling prison officials to attempt the impossible, and the result would be both meaningless and unenforceable.[17]

Nor is freedom from arbitrariness or from risk of factual error itself part of the inmate's "liberty" interest. As we discuss *infra*, pp. 36-42, the rules of the Bureau of Prisons afford hearings to inmates for all punitive transfers and incorporate input from

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[17] Cf. Note, *Guilt by Physiology: The Constitutionality of Tests to Determine Predisposition to Violent Behavior*, 48 S. Calif. L. Rev. 489 (1974).

the prisoner into other transfer decisions. They reflect a reasonable accommodation of the interests of both the prisoner and the prison system. However, the Bureau was not required by the Constitution to introduce all of these procedures. There is no abstract constitutional right to be free of all apparently "arbitrary" conduct where that conduct does not deprive an individual of liberty or property. *Cafeteria Workers, supra; Roth, supra.* True, the function served by hearings is the prevention of deprivations of liberty or property based on erroneous factual premises, but it does not follow that there is a liberty or property interest in diminishing error in decisions not involving liberty or property. Any other result would simply be a bootstrap—*i.e.*, procedures are constitutionally required to diminish the risk of factual error because otherwise such error is more likely to occur.

To a considerable extent, subjection to potentially uninformed decision-making is a necessary result of committing an individual to a custodian who will control the most minute details of his daily life. Realistically, the potential for unfairness, even under the most comprehensive procedures, can be eliminated only by eliminating the custodial control. Moreover, it has been theorized that such a regimen—subjection to potentially authoritarian control that will increase the individual's responsiveness to social rules—may be an important part of rehabilitation.[18] See, *e.g.*,

[18] But see Note, *Bargaining in Correctional Institutions: Restructuring the Relation between the Inmate and the Prison Authority*, 81 Yale L.J. 726 (1972).

Glaser, *The Effectiveness of a Prison and Parole System* 122-123 (1969); Ohlin, *Modification of the Criminal Value System*, in *The Sociology of Punishment and Correction* 179 (Johnston, Savitz & Wolfgang ed. 1962). Finally, we submit that incarceration may permissibly include an element of subjection to administrative action based on possibly incomplete information; it is part of the panoply of things that makes incarceration unpleasant, and therefore legitimately part of its deterrent value.

D. An Inmate May Possess A Legitimate Claim Of Entitlement Not To Be Punished For Acts Of Misconduct Unrelated To Those For Which He Was Convicted

We have contended above that an inmate ordinarily possesses no legitimate claim of entitlement to retain any particular conditions of confinement into which he had been temporarily placed. It could be contended that a different result is required when the justification for the alteration of conditions is an attempt by officials to punish the inmate for an act of misconduct subsequent to the offense for which he was convicted.[19] In such a case, the custodian may be considered to be taking steps to augment the severity of the convict's confinement, or to discontinue re-

[19] Of course, this discussion is limited to those punitive events that impose grievous loss on the inmate; the Due Process Clause does not require an adversarial hearing for even punitive deprivations of less important liberty or property interests. *Wolff, supra*, slip op. at 30, n. 19; *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337.

habilitative programs, for reasons that do not derive from the justification for the initial confinement and its concomitant consequences. This could be seen as subjecting the individual to a deprivation of liberty more severe than originally authorized. It could be argued that the individual has a legitimate claim of entitlement to be free from such augmentation unless he is afforded procedural due process, which ordinarily would consist of some form of notice and opportunity for hearing whenever the new punishment is sufficiently severe.

However, it is unnecessary in this case to reach the issue whether the fact that a transfer is punitive, standing alone, would create a legitimate claim of entitlement. New York State and the United States Bureau of Prisons, like the Nebraska Penal and Correctional Complex in *Wolff*, *supra*, now have in force regulations providing that punishment shall be meted out to inmates only for the violation of certain rules or standards of conduct. By undertaking not to impose punishment except for misconduct, the government has created a legitimate claim of entitlement. Because the government has "recogniz[ed] that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance" and therefore is a liberty interest within the Fifth and Fourteenth Amendments. *Wolff*, *supra*, slip op. 15-16. This creation by the state and federal governments of a liberty interest in freedom from punishment is a sufficient ground for distinguishing transfers for punishment from administrative transfers, in which no liberty or property interest is involved.

II. ADMINISTRATIVE AND PENOLOGICAL CONCERNS REQUIRE A FLEXIBLE APPROACH IN DETERMINING WHAT PROCESS IS "DUE"

If the Court does not accept our argument that only punitive transfers implicate "liberty" or "property" and require some procedural due process, it is then necessary to consider both the interest of the individual and the countervailing interests of the penological system in determining how much and what process is "due." *Morrissey* v. *Brewer*, *supra*, 408 U.S. at 481; *Wolff*, *supra*. By considering only whether, in general,[20] transfers inflict "grievous loss," the court of appeals failed to undertake this required balancing procedure and consequently erred by requiring inflexible procedures regardless of the quantum of loss to the inmate in particular cases and the goals and needs of the prison system.[21]

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[20] See *United States ex rel. Haymes* v. *Montanye*, *supra*, which concluded that all transfers portend "grievous loss."

[21] Other federal courts that have considered the requirements of prison transfers have made similar errors. Perhaps the leading authority is *Gomes* v. *Travisono*, 490 F.2d 1209 (C.A. 1), vacated and remanded, No. 73-1335, decided July 8, 1974, modified and affirmed on remand, No. 73-1065 (C.A. 1, decided December 20, 1974). *Gomes* initially required some procedural safeguards in all transfers but differentiated between punitive transfers (which received procedures substantially similar to those later approved in *Wolff*) and administrative transfers, which it held required only advance notice and an informal opportunity to respond. On remand,

We submit that, although the constitutional accommodation properly applicable to punitive transfers already has been struck by *Wolff* v. *McDonnell*,

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however, the court held that under *Wolff* the purpose and motive for the transfer should be irrelevant because all transfers imposed burdens on inmates and administrators unrelated to the transfer's purpose. We submit that *Gories* both misapprehended *Wolff* and is factually incorrect with respect to the burdens imposed on inmates and administrators.

Other courts have imposed *Wolff*-type procedures only in cases of disciplinary transfer. See, *e.g.*, *Ault* v. *Holmes*, No. 73-2049 (C.A. 6, decided November 15, 1974), affirming in part and vacating in part 369 F. Supp. 288 (W.D. Ky.); *Stone* v. *Egeler*, No. 74-1256 (C.A. 6, decided November 15, 1974), modifying and affirming 377 F. Supp. 115 (W.D. Mich.); *Fajeriak* v. *McGinnis*, 493 F.2d 468 (C.A. 9) (by implication; holds that routine administrative transfers may be made without hearing); *Bryant* v. *Hardy*, 488 F.2d 72 (C.A. 4) (by implication, holds that need for hearing depends on reasons for and consequences of transfer).

Several district courts have required adversarial hearings for all transfers, regardless of the reason they are carried out. *Aikens* v. *Lash*, 371 F. Supp. 482 (N.D. Ind.); *King* v. *Higgins*, 370 F. Supp. 1023 (D. Mass.) (by implication); *Hoitt* v. *Vitek*, 361 F. Supp. 1238 (D.N.H.); *Kessler* v. *Cupp*, 372 F. Supp. 76 (D. Ore.); *Capitan* v. *Cupp*, 356 F. Supp. 302 (D. Ore.); *Robbins* v. *Kleindienst*, 383 F. Supp. 239 (D.C. D.C.), dismissed by stipulation November 27, 1974); *Adamson* v. *Ranger*, No. 73-2594 (C.D. Cal., decided October 3, 1974). The rationale for all of these cases is that the quantum of "grievous loss" suffered by the inmate does not depend upon the reason for the transfer.

On the the other hand, several district courts have held that an adversarial hearing is required only when a transfer is effected for disciplinary reasons. *Walker* v. *Hughes*, 375 F. Supp. 708 (E.D. Mich.) (court will look to "true" reason for transfer); *Beatham* v. *Manson*, 369 F. Supp. 783 (D. Conn.); *Croom* v. *Manson*, 367 F. Supp. 586 (D. Conn.). Cf. *Schumate* v. *New York*, 373 F. Supp. 1166 (S.D.N.Y.) (hear-

supra, a different balance is appropriate in cases of non-punitive transfer.[22]

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ings required only when there is a substantial change in quality of confinement).

Finally, a number of courts have held that hearings are never a prerequisite to the transfer of an inmate. *United States ex rel. Arzonica* v. *Scheipe*, 474 F.2d 720, 721 (C.A. 3); *Gray* v. *Creamer*, 465 F.2d 179, 187 (C.A. 3) ("a state prisoner has no constitutional right to remain in any particular prison" and, therefore, no right to procedural protection); *Urbano* v. *McCorkle*, 334 F. Supp. 161 (D.N.J.), affirmed, 481 F.2d 1400 (C.A. 3); *Hillen* v. *Director*, 455 F.2d 510 (C.A. 9); *Benfield* v. *Bounds*, 363 F. Supp. 160 (E.D.N.C.); *Bundy* v. *Cannon*, 328 F. Supp. 165, 173 (D. Md.). Similarly, courts have held that the initial transfer as part of the classification process is within the discretion of the Attorney General and that no hearings are required. *Rodriguez-Sandoval* v. *United States*, 409 F.2d 529 (C.A. 1); *Van Sirrs* v. *Ciccone*, 437 F.2d 884 (C.A. 8) (initial placement decision not reviewable for abuse of discretion); *Lawrence* v. *Willingham*, 373 F.2d 731 (C.A. 10); *Rees* v. *Peyton*, 341 F.2d 859 (C.A. 4); *Hogue* v. *United States*, 287 F.2d 99 (C.A. 5), certiorari denied, 368 U.S. 932; *Rayborn* v. *Swope*, 215 F.2d 604 (C.A. 9); *Dominguez* v. *Mosley*, 317 F. Supp. 10 (D. Kan.), affirmed, 431 F.2d 1376 (C.A. 10); *Muniz* v. *United States*, 280 F. Supp. 542 (S.D.N.Y.).

[22] Again, this observation is qualified by the requirement that "grievous loss" be present as a necessary pre-condition to any requirement of hearing, even when a transfer is punitive. In our view, it would be the rare case in which grievous loss would be imposed by a transfer from one institution to another of the same security level, and even many transfers to more secure institutions may be free of grievous loss if they do not affect good time, impair opportunities for parole, or involve administrative segregation. But see *Clutchette* v. *Procunier*, No. 71-2357 (C.A. 9, decided October 21, 1974), reconsidering 497 F.2d 809 (hearings required for loss of privileges, however minor); *United States ex rel. Haymes* v. *Montanye*, *supra* (almost all prison deprivations are grievous loss).

A. The Current Practices Of The Bureau Of Prisons Provide Flexible But Adequate Accommodation Of The Interests Of The Inmates And The Institutions

Prisons are closed societies of proven lawbreakers under the constant supervision and control of a limited staff. Widespread hostility, frustration, and inevitable disenchantment on the part of the inmates with their predicament make the atmosphere frequently tense and hostile. Cf. *Wolff*, *supra*. Prison authorities believe that testimonial confrontations between an inmate and staff members or other inmates can exacerbate these tensions and therefore are normally to be avoided, even at the cost of an increased possibility of error in decision-making, with the disappointment and frustration such error can generate. To a great extent, the development of procedures governing transfer, classification and discipline of inmates has been a process of accommodating the desire for the increased accuracy hearings can produce with the need for substantial flexibility in meeting volatile conditions and the need for minimizing both the administrative inconvenience and the potential for strife inherent in any hearing procedure.

The Bureau of Prisons has been engaged in a continuing process of re-evaluation of its procedures, which reflects a concern with assuring fairness and minimizing the likelihood of arbitrary action. This ongoing process should be allowed to continue without being fettered by an unyielding constitutional mandate requiring recognition in all prisons, for all

cases, of procedural rights not yet widely proven to be either necessary or advantageous to either inmate or administrator. We believe that the current rules and procedures are a reasoned and reasonable accommodation of conflicting interests, developed by authorities who bear the heavy burden of maintaining order and providing for rehabilitation in a closed society of a typically disorderly people.

1. *Statutory Transfer Authority*

Prior to 1930 a federal prisoner automatically was incarcerated in a state prison in the district in which he or she was convicted. See 1873-1879 Rev. Stat. 5540, 5541, 5542, 5546; S. Rep. No. 533, 71st Cong., 2d Sess. When the Bureau of Prisons was created in 1930, the Act of May 27, 1930 (App. A, *infra*) required the Bureau to create and maintain a diversified system of institutions to meet the variety of needs encountered in a diverse group of inmates. Sentencing judges were given authority to determine the "type" of institution in which a convict should be incarcerated. After the judge had selected the type of institution, the Attorney General was authorized to choose a specific prison and thereafter to transfer the prisoner in his discretion in order to alleviate overcrowding or attain other penological objectives. Section 7 of the Act of May 14, 1930, 46 Stat. 326. This plan proved too inflexible to meet the administrative and rehabilitative needs of the federal prison system. Often courts designated a type of institution not equipped to furnish appropriate custody, disci-

pline, care and treatment. In order to ameliorate this problem, an individual was initially assigned to an institution of the type designated by the court and then immediately removed to a more appropriate place of custody.

In 1941 Attorney General [later Justice] Jackson proposed to Congress that the Attorney General be given full discretion to designate and change the place of custody. His letter explained that such administrative discretion was important in order to ensure that inmates would be placed in institutions most conducive to their safekeeping and rehabilitation. See S. Rep. No. 369, 77th Cong., 1st Sess., 1-2. The authority Attorney General Jackson sought eventually was granted (App. A, *infra*). Subsequent changes have allowed the Attorney General to "extend the limits of the place of confinement" by granting furlough or work release (18 U.S.C. 4082(a), App. A, *infra*). Special forms of treatment and confinement, some of which are discretionary with the Attorney General and some with the courts, have been established for juveniles (18 U.S.C. 5032), youthful offenders (18 U.S.C. 5010-5015, App. A, *infra*), narcotic addicts (18 U.S.C. 4253, App. A, *infra*), and mental defectives (18 U.S.C. 4241, App. A, *infra*). Each of these procedures operates differently and with different effects on the inmate and different problems for administrators.

2. *The Bureau's Designation and Classification Procedures*

Offenders initially are placed in the custody of the United States Marshal Service, which has access to

copies of their judgment and commitment orders and any available presentence reports. Policy Statement 7300.65, dated March 22, 1972 (App. D, *infra*). The Service designates an initial place of confinement that appears to satisfy the prisoner's needs for custody and that has an inmate population similar to the prisoner.

As soon as the prisoner arrives at the place of initial custody, a classification study is undertaken in accordance with Policy Statement 7200.11A, dated March 6, 1972 (App. B, *infra*). The prison staff assembles background data, performs educational and psychological tests, and observes the inmate's adjustment to the institution. Several interviews are held with the inmate, both to familiarize the prisoner with the institution and its expectations of him and to enable the staff to establish a good personal relationship with the new inmate.

All of the information gathered by the staff is used by the classification committee (consisting of a caseworker, correctional counsellor, education specialist and health specialist) in the preparation of a classification study that formulates an individual correctional program meeting, so far as possible, the needs of the offender. If it is determined on the basis of this subjective evaluation that either the custodial or the rehabilitative needs of an offender could be met more adequately by another institution, the classification committee recommends the immediate transfer of the inmate to another facility.

3. *The Bureau's Transfer Policy*

The Bureau's transfer policy is delineated in Policy Statements 7300.13D, dated June 19, 1974 (App. C, *infra*), and 7400.5C, dated October 4, 1974 (App. E, *infra*). Policy Statement 7300.13D authorizes the Chief Executive Officer of each prison to make transfers whenever

> it is apparent that the correctional treatment needs of the offender will be best served, or the continuity of his training and treatment program maintained, or because the resources of the institution are not adequate to meet the problems presented by him * * *. [App. C, *infra*, p. 35a.]

Whenever it is deemed advisable to make a post-classification transfer, a progress report or special progress report is prepared bringing the inmate's file up to date (App. C, *infra*, p. 49a). Such transfers may be made for a number of reasons:

> It may be "punitive", in the sense that the prison administration is simply attempting to punish a misdeed. It may be for "security" if * * * it is predicated on the apprehension of general and uncontrollable disturbance or on predictions of future misconduct by an inmate. It may be for the best interests of other inmates if the prisoner is disruptive, a threat to others, or otherwise a bad influence as would be the case of a professional with continuing outside criminal contacts. A transfer may be for the best interests of the prisoner himself, for his safety or for his rehabilitation if it is believed that he will be better off elsewhere. And a transfer may be dictated by the needs or shortcomings of the institution, e.g., to alleviate overcrowding. [*Gomes* v. *Travisono*, *supra*, 490 F.2d at 1214.]

We add that transfers also may be justified by the inmate's need for medical care, or to move him to an institution closer to his point of release or more appropriate in light of the time remaining to be served. And in almost all of these cases the transfer may be predicated not only on proof of the supporting facts, but on a reasonable, subjective belief (or even suspicion) that such supporting facts are present.[23] Many of the causes for transfer simply are not susceptible of objective delineation and others—such as the safety of the inmate or the institution—although theoretically objectifiable, are so important that officials may be compelled to act before suspicions can ripen into proof. Accordingly, we agree with the First Circuit's first opinion in *Gomes*, *supra*, that

> [t]he variety in kinds of transfer decisions and the need for latitude in administrative discretion dissuade us from attempting to impose any extensive blanket of due process procedures to cover all transfers. [*Ibid.*]

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[23] *Apropos* our argument in Part I, *supra*, it should be noted that the Bureau's regulations do not condition the power to transfer an inmate (except in cases of punishment) on the existence of any particular controvertible fact or set of facts although, of course, various facts may often be relevant to the discretionary transfer decision. This discretion is circumscribed only with respect to transfers of offenders sentenced under particular statutes and transfers to certain special purpose institutions. App. C, *infra*, pp. 36a-49a.

Recognizing the diversity in situations transfers must meet, and in light of the potential disadvantages of widespread adversarial hearings, Policy Statement 7300.13D (App. C, *infra*) does not provide for any inmate involvement in the transfer, except to the extent the inmate may be involved in the formulation of the progress report or special progress report.

On the other hand, transfers effected for the purpose of punishment are covered by Policy Statement 7400.5C (App. E, *infra*), which provides that transfers are one of the "sanctions or dispositions" available to the Inmate Disciplinary Committee. App. E, *infra*, p. 81a. In such cases the committee follows all of the procedures required by *Wolff*, *supra*,[24] and in addition administrative appeals are routinely available.[25] App. E, *infra*, pp. 76a-80a, 84a-85a. We submit that this fully comports with the requirements of the Due Process Clause.[26]

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[24] In emergecy situations, transfer may precede hearing, but this is not inconsistent with *Wolff*.

[25] The only difference between punitive transfers and other forms of discipline is that, when the hearing is held in the transferee institution because the emergency transfer preceded the hearing, written statements are liberally accepted in lieu of live testimony. Policy Statement 7400.5C, section 9(d)(6) (App. E, *infra*, pp. 82a-83a).

[26] The government often is permitted to take actions pursuant to an authorized non-hearing process. See *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663; *Bob Jones University* v. *Simon*, 416 U.S. 725; *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594. See generally Freedman, *Summary Action by Administrative Agencies*, 40 U. Chi. L. Rev. 1 (1972).

B. The Court Should Proceed Cautiously Before Requiring More Extensive Use Of Hearings, Which May Be Inconsistent With Custodial Needs And Rehabilitative Goals

The variety of the reasons that may call for transfer is a weighty consideration against a uniform regimen of constitutional rules for procedures necessary prior to a transfer from one institution to another, whether or not that transfer involves movement to a more secure prison. Moreover, it also is evident that a requirement of additional hearings would entail a subsequent investment of resources that otherwise would be available for other institutional or rehabilitative purposes. There are, in addition, at least two other persuasive reasons for believing that the use of hearings (particularly adversarial hearings) should be minimized in the context of non-punitive transfers: hearings may hamper the ability of institutions to rehabilitate the inmates and they may also increase the risk of violence by disappointed inmates.

Testimonial confrontations usually can be handled well in a free society. There, the antagonisms between the individual and the opposing witnesses, who hamper the attainment of the individual's desires, may be diffused in numerous ways—sometimes by the action of the hearing official or other authorities, but more often by the fact that the individual affected may return to his home and a variety of releasing activities, avoiding further contact and venting his emotions in less explosive surroundings.

Diffusion of antagonisms occurs less readily in the typical prison setting, where the parties always re-

main in close proximity to each other and where many inmates are characteristically impulsive and action-oriented. See Halleck, *Psychiatry and the Dilemmas of Crime* 284 (1st ed. 1967); Eysenck, *Crime and Personality* 144 (1964). Give and take among the inmate and the staff is a part of the daily prison routine; when differences are handled informally (or, if necessary, by fiat), potentially disruptive confrontations may be avoided. Excessive formal confrontation may damage or destroy the supervisory counselling relationship essential to the achievement of many correctional goals. Moreover, confrontation might place the inmate in a position of equal contest with the correctional officer and thereby lead to an erosion of the officer's control and authority. See McCorkle, *Guard-Inmate Relationships in Prison*, in *The Sociology of Punishment and Correction* 108-110 (Johnston, Savitz & Wolfgang ed. 1962). One important consideration, therefore, is that in the context of the prison environment direct confrontations between inmates and staff are to be avoided whenever possible. Otherwise, "prisons, by their very nature packed with intensive emotional problems, would be kept at a perpetual boiling point * * *." *Braxton* v. *Carlson*, 483 F.2d 933, 941 (C.A. 3).

In addition, there is legitimate reason to be apprehensive that, when emotional levels are raised by continuing confrontations between inmate and staff, and between the inmate and other inmates, some inmates will resort to violence. Prisons are populated with individuals who are there because they have

demonstrated their unwillingness or inability to conform their conduct to the requirements of a free society. The range of offenses for which they are incarcerated is broad, including many crimes of violence. By definition, prison inmates share the characteristic of having on one or more occasions resorted to seriously illegal means to achieve their goals or to resolve problems confronting them. See *Wolff*, *supra*.

Inmates may be provoked into unacceptable action merely by an increase in the level of tension within the institution, which could be caused by an increased frequency of adversarial confrontations. They also may respond violently to an advance notice of a particular action that, for any of a number of reasons, is unsettling. Many inmates enter prison with feelings of hostility and frustration, perceiving themselves to have been innocent or unfairly convicted, whether or not an objective observer would agree. Such a refusal to accept guilt for wrongdoing often is accompanied by a concomitant refusal to accept the legitimacy of the authority of their custodians and a tendency to project onto the custodians blame for all events occuring in prison. See *Halleck*, *supra*, at 306; Abrahamsen, *The Psychology of Crime* 110 (1st ed. 1960). As a result of both of these influences, there is an ever-present potential in prison life for a resort to violence as a means of resolving problems, a potential that could be increased to an unknown degree by the injection of advance notice and formal hearings into major portions of prison administration. The Second Circuit analyzed the problem well in *Sostre* v. *Mc-*

Ginnis, 442 F.2d 178, 197 (*en banc*), certiorari denied *sub nom. Sostre* v. *Oswald*, 404 U.S. 1049:

> It is sad but true that the study of the prison subculture by psychologists and sociologists has until recently been largely neglected. Those who have looked into the problem, however, do not gainsay the volatility of relationships among prisoners and prison officials. * * * We would not presume to fashion a constitutional harness of nothing more than our guesses. It would be mere speculation for us to decree that the effect of equipping prisoners with more elaborate constitutional weapons against * * * prison authorities would be more soothing to the prison atmosphere and rehabilitative of the prisoner or, on the other hand, more disquieting and destructive of remedial ends. This is a judgment entrusted to state officials, not federal judges.

Cf. *Pell* v. *Procunier*, *supra*, slip op. at 8.

C. Many Transfer Decisions Present Issues Unsuitable For Resolution By Hearing

A large variety of transfers—perhaps most poignantly those carried out for the safety of the inmate or for the security of the institution—are undertaken without any concrete "proof" that could be adduced in a trial-type hearing, and without any "charges" that could be the subject of notice. The object of transfers of this sort is to take action before the anticipated (or feared) event comes to pass; almost by definition, it will be action founded upon suspicion rather than proof, and it would be a negligent prison administrator indeed who waited for confirmation of

his fears before taking action. Transfer decisions of this sort are not amenable to *Wolff* procedures.[27]

For quite different reasons, *Wolff* hearings are unsuitable for decisions involving transfers to different rehabilitative programs at different institutions. The important factual questions in making such transfer decisions either relate to the program at the transferee institution (a subject unlikely to be enlightened by contributions from the inmate) or to the inmate's personal prognosis. Although the inmate surely has an important contribution to make to the latter, it is most appropriately made in diagnostic interviews, in personal performance under observation in prison recreation and employment, and in communications that are incorporated in the Progress Report, which is an integral part of the transfer decision.[28] The inmate's contributions cannot usefully be made in an adversary hearing in response to notice of "charges." Cf. *Arnett* v. *Kennedy*, *supra*, 416 U.S. at 186 (opinion of White, J.) (hearings probably not required for dismissal for "inefficiency" rather than on specific charges).

Still other transfer decisions involve few inmate-specific facts. When a prisoner is transferred because of overcrowding, for example, the most relevant facts concern the comparative population density in the

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[27] Of course, because such a transfer is supported only by suspicion, it would be improper to penalize the inmate in the receiving institution.

[28] Under Policy Statement 7200.13A, dated October 16, 1974, the inmate is shown a copy of this report.

two involved institutions; because the inmate cannot meaningfully contribute to the resolution of any factual dispute about those conditions, trial-type hearings are not constitutionally required. Where a hearing cannot serve the purpose for which it is designed, it is not inflexibly required by the Constitution.[29]

III. HEARINGS ARE REQUIRED ONLY WHEN A TRANSFER IS MADE AS PUNISHMENT OR A SUBSTITUTE FOR PUNISHMENT

We have argued that an inmate does not lose any legitimate claim of entitlement, or any liberty or property interest, unless he is transferred for punitive purposes. We also submit that, even if the first argument is incorrect, the great variety among reasons for transfer, the potentially deleterious effects of adversarial hearings upon prison administration, and the unsuitability of some transfer issues for trial-type resolution, militate against a uniform rule of procedures for all transfers. We conclude, in light of this analysis, that notice and opportunity for a *Wolff*-type hearing are required only when a transfer is used as punishment, or takes the place of punishment, and when the transfer in addition imposes grievous loss. Accordingly, transfers for penological and administrative reasons require no hearings.

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[29] Cf. *Gomes*, *supra*, on reconsideration (slip op. at 7), which, although it recognized that hearings have no constructive role to play in such decisions, nevertheless held that they were constitutionally required, and then suggested that effective "waiver" procedures be worked out. Cf. n. 10, *supra*.

There are possible drawbacks to a rule turning on the motive, purpose, or intent of prison officials. Such rules can occasionally prove difficult to administer and may contain a potential for evasion by use of labels serving no legitimate function. However, at least where prison regulations require a factual finding of misconduct prior to imposition of punishment, we believe that the distinction we have suggested is required by the Constitution, and that it cannot be avoided in the interest of establishing a bright-line test more simple to administer but substantially more burdensome to prison officials.

We acknowledge that there is a possibility of subterfuge and that the test we have suggested does not produce a clear result when a transfer is made because officials fear that an inmate will repeat in the future rule violations he has committed in the past, and for which he might have been, but was not, otherwise punished. We do not undertake a definitive resolution of the problems attendant upon identifying when there has been punishment; perhaps the developing case law will clarify what now appears difficult. But we do submit that the possibility of difficult problems in some individual cases is not an argument against the rule we have suggested; in the absence of clear evidence to the contrary, courts should presume that officials will faithfully discharge their duties as enunciated by this Court. *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14-15; *Willis* v. *Ciccone*, No. 74-1294 (C.A. 8, decided November 15, 1974).

In any event, motive, purpose and intent are staple

ingredients addressed by the courts in almost every criminal case and in many other cases, such as tax and tort, as well. The difficulty in their application has not prevented their use where they provide the proper dividing line between the prohibited and the permitted. And, of course, motivation may be inferred from objective criteria, see Holmes, *Privilege, Malice and Intent*, 8 Harv. L. Rev. 1 (1894). It may be, therefore, that a presumption of punishment should arise when an inmate is transferred to substantially more restrictive conditions of confinement soon after an act that could have been the subject of punishment within the institution. Again, however, it is unnecessary to resolve in this case the problem of presumptions and burdens of persuasion.

A procedure similar to that we suggest here is now used for claims that a prisoner has been dealt with for an unconstitutional reason; although prison officials have discretion to transfer an inmate for any reason or for no reason, they may not increase his discomfort for a forbidden reason such as his religion or his race. But notice and opportunity for hearing in every case are not a required prophylactic to prevent such improper transfers. *Roth*, *supra*, 408 U.S. at 575, n. 14. Instead, the aggrieved person must establish a prima facie case that he has been penalized for a forbidden reason. Similarly, the inmate should have to demonstrate that he has been transferred in a forbidden manner—for punishment but without a hearing. The effect of the distinction we have suggested is to cause transfer "for punishment

but without *Wolff* procedures" to be treated in the same manner as transfer "for a forbidden reason." In either case the inmate must establish the forbidden act; it is unnecessary to hold hearings in advance merely to minimize the possibility of evasion.[30]

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded with instructions to proceed in accordance with the opinion of this Court.

Respectfully submitted.

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[30] Of course, administrators would be free to expand hearing procedures to borderline cases, in order to minimize their exposure to vexatious claims and improve the accuracy of their factfinding. But this decision is properly left to the responsible officials.

APPENDIX A

Federal Statutes

1. Section 7 of the Act of May 27, 1930, 46 Stat. 390, as amended, 18 U.S.C. 4081, provides:

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

2. Section 7 of the Act of May 14, 1930, 46 Stat. 326, as amended, 18 U.S.C. 4082, provides:

(a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.

(b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the

person was convicted, and may at any time transfer a person from one place of confinement to another.

(c) The Attorney General may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions to—

(1) visit a specifically designated place or places for a period not to exceed thirty days and return to the same or another institution or facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers, the establishment or reestablishment of family and community ties or for any other significant reason consistent with the public interest; or

(2) work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution or facility to which he is committed, provided that—

(i) representatives of local union central bodies or similar labor union organizations are consulted;

(ii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(iii) the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

A prisoner authorized to work at paid employment in the community under this subsection may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to an institution or facility designated by the Attorney General, shall be deemed an escape from the custody of the Attorney General punishable as provided in chapter 35 of this title.

(e) The authority conferred upon the Attorney General by this section shall extend to all persons committed to the National Training School for Boys.

(f) As used in this section—

the term "facility" shall include a residential community treatment center; and

the term "relative" shall mean a spouse, child (including stepchild, adopted child or child as to whom

the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

3. Sections 1, 2, and 3 of the Act of April 30, 1940, 54 Stat. 175, 176, as amended, 18 U.S.C. 4085, provide:

(a) Whenever any federal prisoner has been indicted, informed against, or convicted of a felony in a court of record of any State or the District of Columbia, the Attorney General shall, if he finds it in the public interest to do so, upon the request of the Governor or the executive authority thereof, and upon the presentation of a certified copy of such indictment, information or judgment of conviction, cause such person, prior to his release, to be transferred to a penal or correctional institution within such State or District.

If more than one such request is presented in respect to any prisoner, the Attorney General shall determine which request should receive preference.

The expense of personnel and transportation incurred shall be chargeable to the appropriation for the "Support of United States prisoners."

(b) This section shall not limit the authority of the Attorney General to transfer prisoners pursuant to other provisions of law.

4. Sections 1, 3, 4, and 5 of the Act of February 26, 1929, 45 Stat. 1318, as amended, 18 U.S.C. 4125, provides:

(a) The Attorney General may make available to the heads of the several departments the services of United States prisoners under terms, conditions, and rates mutually agreed upon, for constructing or repairing roads, clearing, maintaining and reforesting public lands, building levees, and constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated by Congress.

(b) The Attorney General may establish, equip, and maintain camps upon sites selected by him elsewhere than upon Indian reservations, and designate such camps as places for confinement of persons convicted of an offense against the laws of the United States.

(c) The expenses of transferring and maintaining prisoners at such camps and of operating such camps shall be paid from the appropriation "Support of United States prisoners", which may, in the discretion of the Attorney General, be reimbursed for such expenses.

(d) As part of the expense of operating such camps the Attorney General is authorized to provide for the payment to the inmates or their dependents such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe.

(e) All other laws of the United States relating to the imprisonment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, shall apply to prisoners transferred to such camps.

5. Section 6 of the Act of May 13, 1930, 46 Stat. 271, as amended, 18 U.S.C. 4241, provides:

A board of examiners for each Federal penal and correctional institution shall consist of (1) a medical officer appointed by the warden or superintendent of the institution; (2) a medical officer appointed by the Attorney General; and (3) a competent expert in mental diseases appointed by the Surgeon General of the United States Public Health Service.

Such board shall examine any inmate of the institution alleged to be insane or of unsound mind or otherwise defective and report their findings and the facts on which they are based to the Attorney General.

The Attorney General, upon receiving such report, may direct the warden or superintendent or other official having custody of the prisoner to cause such prisoner to be removed to the United States hospital for defective delinquents or to any other institution authorized by law to receive insane persons charged with or convicted of offenses against the United States, there to be kept until, in the judgment of the superintendent of said hospital, the prisoner shall be restored to sanity or health or until the maximum sentence, without deduction for good time or commutation of sentence, shall have been served.

6. Section 605 of the Narcotic Addict Rehabilitation Act of 1966, 80 Stat. 1450, 18 U.S.C. 4253, provides:

(a) Following the examination provided for in section 4252, if the court determines that an eligible

offender is an addict and is likely to be rehabilitated through treatment, it shall commit him to the custody of the Attorney General for treatment under this chapter, except that no offender shall be commited under this chapter if the Attorney General certifies that adequate facilities or personnel for treatment are unavailable. Such commitment shall be for an indeterminate period of time not to exceed ten years, but in no event shall it exceed the maximum sentence that could otherwise have been imposed.

(b) If, following the examination provided for in section 4252, the court determines that an eligible offender is not an addict, or is an addict not likely to be rehabilitated through treatment, it shall impose such other sentence as may be authorized or required by law.

7. The Youth Corrections Act, 64 Stat. 1087, 18 U.S.C. 5010, 5011, 5014, and 5015, provides:

(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and super-

vision pursuant to this chapter until discharged by the Division as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017 (d) of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Division shall report to the court its findings.

§ 5011. Treatment

Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

§ 5014. Classification studies and reports

The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period

of thirty days. The agency shall promptly forward to the Director and to the Division a report of its findings with respect to the youth offender and its recommendations as to his treatment. At least one member of the Division shall, as soon as practicable after commitment, interview the youth offender, review all reports concerning him, and make such recommendations to the director and to the Division as may be indicated.

§ 5015. Powers of Director as to placement of youth offenders

(a) On receipt of the report and recommendations from the classification agency the Director may—

(1) recommend to the Division that the committed youth offender be released conditionally under supervision; or

(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

(3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.

(b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

APPENDIX B

The Bureau of Prisons Policy Statement No. 7200.11A, on Classification Study and Initial Classification, dated March 6, 1972, provides in relevant part:

1. *POLICY.* It is the policy of the Bureau of Prisons to identify and utilize all available training and treatment resources in the correction of public offenders. This allocation of resources is implemented through a systematic classification of offenders and subsequent development of an individual program plan. Since the Classification Study provides the basis for developing an effective treatment program, it is essential for the report to be of professional quality and represent the integrity and best efforts of the classification team or committee.

* * * *

4. *CLASSIFICATION STUDY.* The Classification Study is a composite of reports and forms submitted by various departments within the institutions and represents the staff's effort to identify the offender's needs and develop a correctional treatment program to meet those needs. To facilitate the review of pertinent information contained in these reports, the study will be arranged according to the following sequence;

A. Sentence Data Summary, BP 5-1

B. Background Data, Record Form 16

C. Staff Evaluation

D. Classification Summary

E. Optional Pages, Psychiatric, Psychological and/or Religious Reports

F. Program Analysis Sheet, BP Form 6.1

G. Program Plan, Classification Form 18

H. Educational Data, BP Form 7

I. Social Data, BP Form 6

J. Medical and Related Data, BP Form 8

5. *INSTRUCTIONS FOR PREPARING THE CLASSIFICATION STUDY.* In order to assure that all Classification Studies meet Bureau requirements, the following instructions should be made available to all personnel involved in the classification process. The instructions should be referred to frequently both as a guide in completing daily work requirements and as a vehicle for training.

A. *Resource Material.* Generally, resource material such as the F.B.I. Fingerprint Report, U.S. Attorney Report, Prosecuting Agency Report, and the Presentence Investigation is made available and serves as the basis for the Classification Study. It is not necessary to reiterate all the information contained in the background material but all relevant and significant information should be summarized so that the Classification Study will be an

independent report capable of standing on its own.

The Presentence Report will continue to be the major contributing resource in the preparation of the Classification Study and to the extent that it is possible, arrangements will be made to have a copy of this report mailed to the institution so that it will be available upon the offender's arrival.

The caseworker will especially need to thoroughly review the Presentence Report in an effort to coordinate his interviews so that he will be able to obtain information that will fill-in, compliment, and amplify areas in the Presentence Report that require elaboration. Interviews should not be used to gather irrelevant data, but should be considered as a probing and diagnostic tool to provide information for evaluating causative factors in the offender's involvement in crime.

When a Presentence Report is not available, all personnel involved in preparing segments of the Classification Summary will have to make a greater effort to obtain the necessary information for effective program planning. Caseworkers should pay particular attention to reports received from other departments and conduct their interviews in a way that will aid them in filling in missing information and expand on other areas when neces-

sary. Under these circumstances, the Classification Summary will be presented in much more detail then would be required if a Presentence Investigation Report were available.

* * * *

D. *Classification Summary.* The Classification Summary is the report that brings together information which is known about the offender's criminality, past history, and current status. In the past, this report was very brief and was designed to supplement the Presentence Report and be used in conjunction with it. The previous Classification Summary format and instructions have not produced the kind of information necessary to make enlightened case management decisions without a lengthy research of the files. It has also been noted that Classification Summaries are deficient in many instances and often inconsistent with other segments of the Classification Study. In an effort to correct this problem the Classification Summary has been revised and extended and a Staff Evaluation has been added to the Study. A sample of the format to be used for Classification Summaries is attached. All institutions should plan to reproduce this format on classification form 1b until such time that revised form 17 is made available. Once the revised classification form 17 is available, it will be used as

the face sheet of the Classification Summary and form 1b will continue to be used for subsequent pages, including the Staff Evaluation.

(1) *Current Offense.* The section on current offense should provide the necessary information to determine whether or not the offense was a joint undertaking or an independent venture, a single act or part of a series of acts, situational or a culmination of extended planning. The victim's loss and the offender's net gain should also be summarized in this section. Information under current offense should be divided into two parts.

a. *Official Version and Sentence.* It is necessary for this part of the report to be lengthy. Information related to the offense, basic sentencing data, role of the offender, codefendants, loss to the victim and aggravating circumstances can be generally presented in a few sentences.

b. *Offender's Explanation.* The offender's explanation regarding the offense is essential and should include comments regarding degree of involvement, motivation, and net gain. Again, the explanation need not be long and should represent the caseworker's interpretive summary of what the offender said.

(2) *Prior Record.* It is not necessary to list the prior record in chronological order, or to describe every incident. It is important, however, to distinguish between assaultive acts and crimes against property, between misdemeanors and felonies and between juvenile and adult offenses. The material will be summarized in two parts.

a. *Summary.* In the summary, the caseworker should stress the number and types of arrest, convictions and sentences, and response to previous supervision while confined or under parole or probation supervision. An attempt should also be made to explain any substantial period for which there were no new offenses reported.

b. *Detainers.* A brief statement regarding the status of all known charges and detainers should be made.

(3) *Past History.* Although the Presentence Investigation and other resource material provides a vast amount of information regarding the offender's background, the Classification Summary should concentrate on summarizing relevant information related to the offender's social, educational, military, and employment history. The facts should be presented as succinctly as possible, stressing only that in-

formation which might be related to the offender's criminality.

a. *Social.* In a few sentences, the caseworker should attempt to identify any areas in the offender's social history which may have contributed to his involvement in crime. This might include the neighborhood, family relationships, marriage, physical, and mental health. Detailed information such as the father's place of birth is not necessary or desirable.

b. *Education.* At this point, the caseworker should provide only a brief statement regarding the offender's response to his educational experience, i.e., his adjustment in school and his achievements.

c. *Military.* Again, only a brief statement regarding the offender's military obligation is required. Comment on his status with the Selective Service Board and response to military experience if applicable, i.e., training, adjustment, discharge.

d. *Employment.* This portion of the Classification Summary should provide a concise summary of the offender's total employment experience. The caseworker should attempt to describe the number and types of previous jobs

held by the offender. Adjustment on the job and significant periods of unemployment should also be explained.

(4) *Current Findings.* During the initial classification process, the offender is tested, given a physical examination, interviewed, and observed to gain additional information about his character, physical and mental health and ability to change. Information obtained from these sources should be summarized under the following headings of Character Traits, Physical and Mental Health and Tests.

a. *Character Traits.* The caseworker should make a brief statement regarding the offender's assets and liabilities related to self-control, interpersonal relationships, standards and values. This statement should be drawn from information received from various departments within the institution regarding the offender's behavior, relationship with others and personal habits. As in all other segments of the Classification Summary, opinions should be avoided and the statement should be based on facts.

b. *Physical and Mental Health.* In most situations, a brief statement of the current findings regarding the offender's physical and mental health will be sufficient. If problems are diagnosed, however, the caseworker should indicate the extent and nature of the problems and comment on employability. If indicated, a more extensive report on mental and physical health can be added to the Classification Study under the section entitled "Optional Pages".

c. *Tests.* Each institution administers a number of tests to measure an offender's current standing and potential for achievement. The results of these tests plus an interpretative summary must be made available to the caseworker so that he can incorporate it in the Classification Summary. The caseworker will list all tests given and summarize what the results mean in terms of training and treatment. Any information which is available regarding testing prior to the offender's arrival at the institution should also be summarized.

6. *STAFF EVALUATION.* The Classification Study has been extended to include a comprehensive staff evaluation. The evaluation will not exceed four paragraphs and generally one typewritten page. This report represents the com-

bined opinion of the Classification Committee or Team and is written in a way which stresses an evaluation of the facts. It will be subjective and judgmental in nature and based on suppositions. Even though it covers some of the same areas as the Classification Summary, the *Classification Summary only reports on facts.* The staff evaluation provided your opinion regarding those facts. The staff evaluation should be reproduced on Classification Form 1b with the date being typed in following the registration number, as indicated on the attached sample.

A. *Illegal Behavior.* In this paragraph, the caseworker should summarize the Classification Committee's or Team's opinion regarding the offender's involvement in crime. Emphasis should be placed on his current attitude regarding the offense, codefendants, his prior record, and pending charges. Some statement regarding his potential for future involvement should also be recorded.

B. *Causal Factors.* The Classification Committee or Team should formulate a theory regarding the offender's criminality and present situation. Such factors as the use of drugs, family problems, health, lack of education and training, emotional and psychiatric problems should be considered and an opinion expressed regarding their probable contribution to the offender's current situation and life style.

C. *Program Goals.* The third paragraph of the Staff Evaluation should provide a summary

of the offender's correctional treatment and training needs and his program plan. Further, a statement regarding his or her willingness to take advantage of the available resources and an estimated time for completing the program should be included.

D. *Release Plans.* The final portion of the Staff Evaluation should give an opinion regarding the offender's release needs, anticipated release date, and parole readiness for commitments under the Youth Corrections Act, 4208 a-2. and the Federal Juvenile Delinquency Act. Available resources should also be evaluated along with the offender's post commitment plans.

7. *OPTIONAL PAGES.* When there are psychiatric, psychological, and/or religious reports, they should be inserted immediately after the Classification Summary.

Psychiatric or psychological reports will be scheduled by the Medical Department when indicated. Such reports should be prepared as a matter of policy in study cases.

While Chaplains will continue to conduct interviews with all newly committed offenders, they will no longer be required to submit reports on all of them. Instead they will prepare for circulation to the team members prior to the meeting, reports on those offenders for whom such reports are appropriate in their judgment. While the spiritual and religious

aspects of the offender's life still receive primary focus, the Chaplains will not limit themselves to these considerations but will also make observations in other areas when they think that such observations might be useful to the team.

8. *PROGRAM ANALYSIS SHEET.* This sheet is arranged so that the information submitted may be computerized and subjected to statistical analysis. As this data accumulates, it will reveal the areas in which our programs are sufficiently staffed and those in which they are not. These facts will be revealed about each institution and about the system as a whole.

It is extremely important that this information be accurately and conscientiously recorded because manpower decisions will be based on it. To this end, there are management control methods that department heads and wardens will need to exercise. The first obvious check is that the Program Plan be in accord with the Analysis Sheet. If discrepancies occur, especially on a regular basis, then one or the other does not give a true picture. Similarly, the totals of the men participating in given programs or achieving particular goals (e.g., the G.E.D. Certificate) should closely approximate the numbers planned for and recorded on the Analysis Sheets. If no relationship exists between plans and outcomes, there is an obvious problem.

It is important to stress that the Central Office is trying to gather accurate information in order to

plan for and justify program resources. The information can serve the same purpose and has the same value for institution management.

A. *Procedures*

(1) For each correctional factor, indicate the *level of need* by entering the Code 0, 1, 2, or 3 in the corresponding box to the right of each category.

(2) For every factor for which no program is planned enter 2 in the corresponding box to the right of the factor. If program is planned enter (1).

(3) If no program is planned enter code or codes indicating constraints (start at left and list to right side). No more than three constraints may be listed.

(4) If program is planned list activity or activities in the corresponding box (no more than five activities for any one factor).

(5) When a program is not available and a substitution is made—e.g., counseling substituted for psychotherapy because no mental health worker is available—indicate by placing [02 55] under constraints and a [10 58] under activities.

(6) For community based program place 62 and then list activity, e.g., [62 50] indicates study release.

B. *Minimum Program Guidelines.* It is required that offenders be programmed according to the following chart:

Category	Minimum Programming
I	Activities for at least 4 factors*
II	Activities for at least 2 factors*
III	No minimum requirement

* The *Same* program activity can be planned to deal with needs present under *one or more* factors.

Adherence to these guidelines and a comparison between the Program Analysis and the Program Strategy will guard against cases being handled perfunctorily.

The completed Program Analysis Sheet will be kept in the inmate's institutional folder; *a copy will be sent to the Bureau's Information Branch.*

9. *PROGRAM PLAN.* The Program Plan continues to be an important guide in establishing an effective treatment program for offenders.

A. The Staff Evaluation paragraph should be deleted, however, and a new paragraph entitled Transfer Recommendation, should be added. If it appears that the offender is not suitably classified for the program at your facility, the paragraph of Transfer should be completed and explain your rationale for moving him to another facility.

B. *Environmental Factors.* The correctional factors to be considered in this area are those of Economic Status and Family Conditions. If the staff decision is to apply treatment resources in these areas, the goals of the treatment shall first be spelled out in such a way that progress can be noted and achievement documented. The program to be followed should be outlined in equally specific terms. The form permits variation of review dates if this is considered advisable.

C. *Health.* This section applies to both mental and physical health. Medical goals are sometimes independent of other treatment goals. However, where possible, these decisions should be integrated with other factors such as sentence length, training programs, transfer plans, etc.

D. *Skills.* Both educational and vocational areas should be considered in this area of planning. If resources are to be applied in either or both areas, the goals should be clearly stated. Relatively speaking, it is easier to state goals in measurable terms in these fields than in most of the others. Both goals and program, therefore should be phrased in measurable concrete terms.

E. *Character Traits.* In this section, we consider the correctional factors of self-control, interpersonal relationships, standards and values, and aspirations. These terms and con-

cepts are the most difficult to deal with in measurable behavioral terms and yet the most vital elements of progress are contained here.

Each classification group must make a continuous, sincere effort to state their goals, and their plans to achieve them, in behavioral terms. From this effort we should reap improved and refined ideas and ways of expressing them.

10. *SPECIAL TYPE OF CASES*

A. *Processing of Commitments for Study under S. 5034, 5010(e), and 4208(b)*

(1) *Delays in Delivery of Study Cases.*

Whenever an offender committed under Section 5034, 5010(e), or 4208(b) is not received by the designated institution within 10 days from the date of the designation made, the Chief, Case Management, at the institution or his delegated representative, shall contact the appropriate United States Marshal's Office by telephone and urge prompt delivery because of the deadlines involved. If the commitment to the institution has not been made within 15 days from the date the designation was made, the institution shall notify the Bureau by telephone, Office of the Assistant Director, Institutional Services Division.

(2) *Requests for Extensions of the Study Period.* Whenever circumstances such as the inability to collect necessary or reliable data within the time limit allotted for the study, need for more extensive psychiatric or medical examination, etc., indicate the necessity for more time than has been provided in the initial commitment, an extension should be requested. However, this should be an infrequent occurence and extensions should be requested only if absolutely necessary. The chief administrative officer of the institution shall request extensions from the sentencing judge, usually not to exceed 30 days. A copy of the letter and subsequent reply should be forwarded under brief cover memo to the Office of the Assistant Director, Institutional Services Division. Since the Bureau maintains control cards on all study cases, we must receive either the study material or notification that it will be late, 30 days prior to the date the recommendations are due in court.

(3) *Preparation of Classification Study.* Particular attention should be given to the following:

a. When it is ascertained that a Presentence Report has not been prepared by the United States Probation

staff, a post sentence report should be requested and every effort should be made to verify and authenticate the information provided by the offender. If information is obtained from the offender, the study report should reflect the source of the material and indicate whether or not it has been verified.

b. In many cases there is a rather obvious reason for the court's request for study. In other cases the purpose is not immediately clear. When there is any doubt in the caseworker's mind regarding the reason for study, he should telephonically contact the United States Probation Officer to clarify the court's concern. Once this has been determined, the study should deal effectively with the areas of the court's concern.

c. The Program Plan and Analysis Sheet (BP 6.1) should be omitted from the study. The Classification Summary will follow the same format used in a regular Classification Summary only it may occasionally be necessary to expand certain segments of the report. The Staff Evaluation will also be the same as that prepared for a regular study and special care should

be taken to assure that it represents the total group judgment of the team or committee.

d. When probation is recommended for certain types of community treatment, we believe it should first be determined that the necessary treatment resources are available in the community. We would encourage telephonic communication with the United States Probation Officer in these cases in order to determine whether your recommendations are realistic. Care should be taken, however, to advise the United States Probation Officer that you are only evaluating potential resources and that a final decision has not been made regarding a recommendation to the court. The availability of resources should be spelled out in the Staff Evaluation section of the report.

e. Specific recommendations as to sentence disposition should be included only in the transmittal memo or letter to the court and should *not* appear anywhere in the classification study.

f. Study cases should be assembled as follows: Face Sheet (Record Form BP 5.1); Record Form 16; Staff

Evaluation; Classification Summary; Psychiatric, Psychological, and Religious Reports; Form BP 6, Social Data; Form BP7, Educational Data; and BP 8, Medical and Related Data.

g. It is imperative that we prepare comprehensive, well-organized, well-integrated, and well-written classification studies on all offenders committed by the court for study and observation. Particular care should be taken in regard to appearance, grammar, clarity of style, and material consistency. Also, special attention should be given to providing clear and legible copies of the study for submission to the court. All material in the study should be reproduced in the same manner.

(4) *Transmittal of Classification Study and Institutional Recommendations to the Bureau on 4208(b), 5034, and 5010(e) Study Commitments.*

a. Five copies of the classification study and one copy of the Presentence or Post Sentence report shall be submitted to the Bureau, Office of the Assistant Director, Institutional Services Division, as promptly as possible. In 4208(b) commitments, this material will be submitted within 60 days from the date commitment was imposed, unless an extension has been requested and granted. In 5034 and 5010(e) commitments, material will be submitted within 45 days from the date commitment was imposed, again, unless an extension was requested and granted. Although a specific period of time is allotted for studies (90 days for 4208(b), (60 days for 5034 and 5010(e), it is not necessary that the allotted time be used. Expeditious preparation and submittal of study cases is encouraged, regardless of the amount of time provided by the statutes.

b. In 4208(b) and 5034 cases, the institution recommendations shall be forwarded in the form of a single spaced letter to the sentencing judge for the signature of the Director, Bureau of Prisons. In the past this has been in the form of a draft letter. However, this policy is being discontinued and the letter should be of such high quality that it can be forwarded directly to the Director for his signature.

c. Each institution should maintain a file containing copies of Bureau study

case letters, forwarded to the courts, for training purposes. Special attention should be given to the outline and structure of these letters. Additionally, letters to the court should flow logically from the Staff Evaluation and should be written in a concise, straightforward style. Jargon and theorizing should be avoided. Since a summarization of pertinent factors will have been done in the Staff Evaluation, the main function of the letter is to convey a specific recommendation to the court as to disposition and to briefly outline plans for training and treatment. The treatment plan should support the recommendation. It should not exceed one page in length (single-spaced) and the letter should be undated.

d. In 5010(e) cases, the Chairman of the Youth Division, United States Board of Parole makes the recommendation to the court. However, the institution recommendation shall be forwarded to the Bureau by a cover memorandum summarizing the staff's recommendations for disposition and their suggestions for specialized treatment and training.

e. The institution staff, particularly the caseworker who drafted the initial letter in 4208(b) and 5034 study cases, should review the copy of the Bureau's final letter to the court. Similarities and differences should be noted. Perhaps, in this way we can all address ourselves to similar issues and approach a common style.

* * * *

APPENDIX C

The Bureau of Prisons Policy Statement No. 7300.13D, on Delegation of Transfer Authority, dated June 19, 1974, provides in relevant part:

1. *POLICY.* The Bureau of Prisons attempts to place all committed offenders in the correctional facility for which he is most appropriately classified in terms of age, place of residence, offense, sentence, and prior record.

2. *PURPOSE.* In order to achieve this policy, the Director has delegated the authority to transfer offenders from one institution to another to the Chief Executive Officer of each federal facility. The authority to transfer men from one federal institution to another or to an approved non-federal facility is delegated to assure expeditious movement to an institution for which the offender more properly classifies.

* * * * *

5. *GENERAL GUIDELINES*

a. Generally, transfer consideration is most appropriately given at the time of intake screening, initial classification, or at regularly scheduled reviews.

b. A significant number of transfers will be for the purpose of placing newly committed offenders in institutions for which they more properly classify. To provide classification committees and teams with current information as to the mission of each federal institution, there is attached to this delegation Appendix A, which describes the population characteristics, commitment areas, security limitations, and significant program resources of each institution. The overall integrity of this classification system must be preserved.

c. At initial classification the staff should attempt to plan a complete program throughout the entire period of confinement, including institutional and post-release planning. In making this plan, all the resources of the service should be considered and this delegated transfer authority used to place the offender into the setting which will be most useful to him in his total correctional program.

d. When it is apparent that the correctional treatment needs of the offender will be best served, or the continuity of his training and treatment program maintained, or because the resources of the institution are not adequate to meet the problems presented by him, then the Chief Executive Officer may issue an order directing the transfer of the offender to an appropriate facility following the guidelines in Appendix A, and subject to the limitations in paragraph 6a-6r. (For transfer to Community Centers see section 6-s).

e. In the exercise of this transfer authority, the Chief Executive Officer must be particularly

alert to the limitations regarding the place of confinement for misdemeanants, juveniles, youths, addicts and mentally-ill offenders.

6. *LIMITATIONS AND REGULATIONS*

a. State prisoners and prisoners from the District of Columbia serving sentences under contract in our institutions may not be transferred from one institution to another without prior approval. The usual progress reports and recommendations shall be forwarded on all state boarders to the Population Control Unit in the Bureau. District of Columbia prisoners will be referred to and accepted by the receiving institution.

b. Individuals committed to custody under the provisions of the *Federal Juvenile Delinquency Act* may be transferred under this delegation of authority to another juvenile or youth institution, following their initial parole hearing, without referral to the Regional Case Management Branch. When transfer to another type institution appears indicated, the recommendation will be forwarded to the Regional Case Management Branch. (See paragraph 6, r(2) for exception).

c. *Youth Corrections Act* commitments shall be classified at the receiving institution, where the initial parole hearing will also be given. Following this hearing, or at any appropriate time thereafter, the youth offender may be

transferred by delegated authority to another more appropriate youth institution without referral to the Regional Case Management Branch. Youth offenders recommended for an adult correctional facility at the time of initial classification or at any later date, shall be recommended for transfer to the Regional Case Management Branch (See paragraph 6, r(2) for exceptions.)

Any youth offender, having once been authorized for transfer to an adult Federal Correctional Institution, may be transferred under delegated authority to some other, more appropriate, adult FCI.

Any youth offender, having once been authorized for transfer to a penitentiary may not be transferred to another penitentiary under delegated authority and must be approved by the Regional Case Management Branch.

d. Generally, those offenders who are in the process of being transferred and are in holdover status (at neither the sending nor receiving institution), should not be diverted from the intended receiving institution. If, by reason of their adjustment, or other extenuating circumstances, they should not be moved to the receiving institution, referral should be made to the Regional Case Management Branch. In any event, holdovers must be monitored to insure expeditious movement and juveniles and

youths in transit must not be held in a penitentiary for more than 24 hours.

e. Due to critically high population levels it may occasionally be necessary for the Central Office to declare a *moratorium* on selected institutions. If an institution has an offender in "holdover" status while enroute to an institution which has been selected for a moratorium, the holding institution is instructed to allow the offender to complete the transfer. In this same light, if one institution has an offender who they believe to be properly classified for another facility which has been placed under a moratorium, the two Chief Executive Officers are authorized to individually confer about these selected individuals regarding the transfer.

f. All recommendations for transfer to the Medical Center for Federal Prisoners, Springfield, and FCI, Lexington, Kentucky, for either psychiatric or medical care shall be cleared with the Director, Medical Center, or the Chief Executive Officer, Lexington, Kentucky or authorized representative, prior to effecting the transfer. Upon their advice that facilities are available, and that the case is suitable for moving the patient to the Medical Center, or the Lexington Hospital, the transfer may be effected. Generally referrals shall be made to the Director, Springfield, or Chief Executive Officer, Lexington on the basis of a progress

report, including such medical reports as are necessary to making an informed decision. In emergency situations, telephone communications may be made for the purpose of expediting the transfer.

The Director of the Medical Center, the Chief Executive Officer, Lexington, is delegated authority to issue transfer orders to return hospital patients, both medical and psychiatric, upon recovery, to any appropriate institution, subject to the broad guidelines of this delegation of authority. In some instances, it will be highly desirable to communicate with the prospective receiving institution prior to issuance of a transfer order. Unusually complicated situations should be referred to the Regional Case Management Branch.

g. NARA, Title II cases remain at the institution where they are committed unless specific authorization is granted. Recommendations require a full progress report and should be forwarded to the Assistant Director, Correctional Programs Division.

h. Transfer to local hospital. When a determination is made that an inmate requires emergency in-patient care and should be admitted to a community hospital or government hospital other than one operated by Bureau of Prisons, and for some good reason the Medical Center at Springfield would not be advisable,

the Chief Executive Officer of the institution is authorized to issue an order transferring custody of the prisoner to the U.S. Marshal in whose District the hospital is located.

Since these transfers are frequently made hastily and for emergency reasons, the Marshal should be notified by telephone, at which time he will be advised regarding the degree of supervision the Warden believes is necessary. This information should be confirmed in a memorandum covering the transfer order when it is sent to the Marshal. When the institution is notified that the hospital is ready to discharge the patient, the Warden should issue another transfer order retransferring the patient from the Marshal to the institution.

Whenever in-patient care in a local hospital is considered advisable, and no emergency is involved, the advice of the Medical Director, Division of Health Services, will be obtained prior to issuance of the transfer authorization.

Under these conditions, the Marshal is responsible for paying the costs of hospitalization and treatment. He is also responsible for providing supervision if he determines this is needed. The institution should cooperate with the Marshal by providing supervision until the Marshal is able to arrange for such guards as may be needed.

The cover memorandum which accompanies the transfer order to the Marshal shall include the following paragraph:

"Pursuant to authority delegated to me by the Director, Bureau of Prisons, this is your authority to accept custody of the above-named for commitment to the hospital indicated in the transfer order. By this memorandum, you are authorized to pay the hospital expenses. Please forward the usual jail record cards (Form DJ-100) showing commitment to and discharge from the hospital."

The Bureau copy of the cover memorandum should be marked for the attention of the Medical Director, Division of Health Services, Bureau.

i. *Volunteer Research Projects.* Subject to criteria established by the Assistant Director, Correctional Programs Division in cooperation with the staff of each research facility, the Chief Executive Officer of the institution is authorized to issue orders for transfer to and return from such facility for participation in the research project. Any questions concerning suitability of a particular individual for any project should be referred to the Regional Case Management Branch.

j. *Community Centers*

(1) The authority to effect transfers to and from Community Treatment Centers has been delegated to the Chief Executive Officer of the institutions and centers involved. Transfer authority for directors of non-federal facilities is limited to placing an offender in the custody of the nearest U.S. Marshal.

(2) Community Treatment Centers established to provide assistance to offenders who do not have independent resources and who would find it difficult to adjust in the community without the services of the Center. Priority consideration should be given to those individuals who lack a job, a place to live or the necessary self confidence to develop resources on their own. Community Centers are not intended to be used as a reward or solely as a means of returning an offender to the community earlier than the time established by the expiration of his sentence or a parole date. Therefore, transfers should only be approved when it is apparent that utilization of the Center's resources might have a positive impact on an individual's ability to avoid future illegal behavior. In addition, when reviewing a request for transfer to a Community Treatment Center the following eligibility criteria should be followed:

(a) Generally, individuals should be within six months of their release date. Plans for greater program duration should be discussed with the CTC Director prior to transfer;

(b) Generally, individuals who have been convicted of violations of *financial trust* or of an organized, sophisticated offense have little need for CTC programs. If there is reason to consider violation of financial trust, they may be approved by the Warden or Chief Executive Officer, but a special memorandum must be written for the file giving the rationale for approval of the CTC placement. Individuals who have been involved in organized, sophisticated offenses are to be referred to the Central Office for approval.

(c) Those individuals convicted of, or charged with serious or repetitive crimes of violence against a person are generally excluded from CTC programs. If there is reason to consider such an individual, they may be approved by the Warden or Chief Executive Officer, but a special memo-

randum must be written for the file giving the rationale for approval of the CTC placement. Such clearance must be obtained *prior* to preliminary contacts with the CTC. Any individual in this category who has been granted parole by the United States Board of Parole, except to a detainer, does not need Central Office Clearance.

(3) Because of the limited capacity and unique nature of community centers. no transfer into a center shall be effective prior to receipt of advice from the Center Director that space is available. FJDA and YCA offenders will ordinarily not be transferred into a Center until the Youth Division of the United States Board of Parole has set a release date, or until the youthful offender is within 120 days of his release.

k. *Misdemeanants*, i.e., those offenders who have been convicted of offenses for which the maximum penalty is one year or less, may not be transferred to penitentiary-type institutions without first obtaining a waiver, Record Form No. 37. Having obtained a waiver, the general delegation of authority may be used as appropriate.

l. Offenders committed to custody under the *split sentence* provisions of Title 18, U. S. Code, Section 3651, may not be transferred to penitentiaries without prior approval of the Regional Case Management Branch.

m. *Separation Cases & Special Offenders.* When it becomes necessary to separate individuals due to codefendant animosity, cooperation with government officials, or to keep potentially serious escape risks apart or when the individual is a notorious offender because of the organized, sophisticated nature of the offense, or when the offense has received considerable publicity, their cases must be referred to the Assistant Director, Correctional Programs Division for review and stamping with the notation "the inmate may not be transferred without prior Bureau approval per Policy Statement 7300.13C." When the transfer of such an individual is considered necessary, the transfer recommendation shall be referred to the Population Control Section in the Central Office. Also, when the location of codefendants is not known, inquiry should be made of this same office.

n. All transfer recommendations for the concurrent service of federal and state sentences shall be referred to the Regional Case Management Branch, after it is determined that a state will accept the offender. (Except Cali-

fornia cases—refer directly to Terminal Island).

All transfer recommendations for boarding federal offenders in non-federal correctional facilities, except residential community treatment centers, shall be referred to the Regional Case Management Branch. When a state placement has been approved, the referring institution must forward to the state facility a copy of the Judgement and Commitment, sentence data with adjustments for extra or forfeited good time, and file material. A copy of the sentence data, (with instructions to place a detainer) with the above listed adjustments, shall also be forwarded to the U.S. Marshal in the district in which the state facility is located and to the Population Control Office in the Central Office.

o. Offenders having *detainers, and probable pending charges,* may be transferred under this delegation of authority to an institution for which they properly classify. Ordinarily, persons in this category should not be moved to an institution more distant from the detaining authority unless there is substantial reason to believe that the detainer will be dropped, or that the pending charge will not be prosecuted. Inmates who indicate an intention to oppose extradition should not be moved under this delegated authority into an institution within

the state responsible for placing the detainer. Such cases, and others in which there are legal and/or jurisdictional problems, should be referred to the Regional Case Management Branch. Also, Policy Statement 7500.14a should be reviewed concerning this type of transfer.

p. When consideration is being given to making a transfer which will place an offender in an institution for which the offender is not properly classified under ordinary standards, or when an offender is being considered for transfer because he is a particularly difficult problem, the Chief Executive Officer will send a copy of the progress report to the Chief Executive Officer of the proposed receiving institution for his comments and concurrence. If they are not able to achieve agreement, the matter will be referred to the Regional Case Management Branch. Copies of institution correspondence about the case should be forwarded.

q. *If a group disturbance occurs,* it may be necessary to move some of the participants. After the Chief Executive Officer has made his decisions regarding transfer, he should thereafter confer with the Regional Director, who will contact the Assistant Director, Correctional Programs Division, regarding disposition of those inmates most seriously involved. This will insure that the Director is informed re-

garding the resolution of the incident, that overall needs of the Prison Service are taken into account, and that transportation is arranged promptly.

r. *Relationship with Other Agencies*

(1) In transferring an offender for release planning purposes, the impact of this action on the work of the U.S. Probation Officer must be taken into account. When there is reason to doubt regarding the offender's claim to residence, and/or release resources, at the proposed destination, the approval of the receiving Probation Officer will be received before issuing the transfer order.

(2) The rules of the United States Board of Parole require initial hearings for offenders committed under FJDA, YCA, or Section 4208(a)(2). Unless there is definite airlift or bus schedule information to show that the offender can be transferred and receive his initial hearing on as early a date as he would have at the transferring institution, transfer should be deferred until the hearing is completed.

Persons awaiting mandatory release or parole violator hearings *should not* be moved until after the hearing has been completed.

The Board of Parole should be kept fully and promptly advised of transfer activity on persons awaiting parole decisions and on those who have been granted parole dates. Those scheduled for Parole Board or Youth Division hearings within 60 days should not be transferred until after the hearing is completed. Special circumstances which might necessitate exceptions to this rule should be cleared with the Board or Division ahead of time.

(3) The Chief Executive Officer will assure himself that any complicating jurisdictional and legal problems are resolved before transfer is accomplished. Thus, an offender who has legal action pending should not be transferred without prior consultation with the appropriate court.

7. *PROCEDURES*

a. Ordinarily, a decision to transfer an offender should be made at initial classification, or at another regularly scheduled review, for which a complete progress report is prepared. Occasionally, transfer action will be necessary as a result of some unanticipated or emergency circumstance. At such time, a special progress report bringing the entire case up to date, should be prepared. Whenever a full progress report was prepared within 90 days of trans-

fer consideration, a memorandum report, bringing the case up-to-date will suffice.

b. Each institution is authorized to duplicate blank transfer authorizations. An original and one copy of each order are necessary. (Institutions may wish to prepare an additional copy for their own statistical purpose, but this is not required by this regulation.) A number of federal courts have held, in prosecutions for escape, that the Government must prove the legality of commitment by competent evidence.

In order to have the requisite documentation readily available, the "Return of Service" will be executed on the original of the transfer order. Also, in all transfers to Community Treatment Centers, federal or contract non-federal, and in all transfer to non-federal work-release facilities, each copy of the transfer order shall carry the typed notation "This transfer is effected under the provisions of paragraph (c), Section 4208, Title 18, U.S.C." Therefore, as a transfer movement begins, the original transfer order will be placed in an envelope stapled to the A/W control card and attached to the outside of the Messenger Envelope (Std. Form 65) containing the complete inmate file. The officer who completes the transfer at final destination will execute the "Return of Service" on the original transfer order, and this will be filed with the commitment papers.

One copy of the transfer order will be placed inside the central file folder upon departure along with the usual material which includes the rationale for transfer. This will serve as the file copy for the receiving institution.

The Central Office has previously required a copy of the transfer order for Bureau file. This will no longer be necessary. Additionally, the 3″ x 5″ card and a memo to the Assistant Director, Correctional Programs Division, will no longer be forwarded to the Central Office.

c. The reason for transfer, according to the following code, should be shown on the original and each copy of the transfer order. It is recognized that there may sometimes be overlapping reasons for the transfer. In such instances, please show the primary reason. With the exception of Code 290, all transfers must be referred to and accepted by the receiving institution. District of Columbia offenders are not to be transferred under Code 290.

Code

290 *Institution Classification.* (This reason is most appropriate for transfers made at initial classification, and will usually involve transfer to an institution of a different type.)

291 *Nearer Release.* (This reason will be used when transfer is made to an institution nearer the offender's release destination, either at time of initial classification or at a later date.)

292 *Adjustment Purposes.* (This reason will ordinarily be used when the inmate is moved prim-

Code

arily for the purpose of providing closer supervision and controls, and is related to poor institutional adjustment).

293 *Closer Custody.* (This reason will be used when custody, in terms of escape, is the primary concern).

294 *Medical Attention.* (This includes persons moved for medical and psychiatric care, surgery, and narcotic addiction).

295 *Medical Treatment Completed.*

297 *Training Purposes.* (Transfer made for participation in a specific training program, as dental laboratory at Lewisburg, machine die and tool at El Reno, etc.).

298 *Work/Study Release.* (When transfer is made specifically for participation in work-release program at receiving institution).

299 *Community Centers.* (All transfers into guidance centers or other community residential centers shall be coded here).

300 *Temporary transfer* to custody of U. S. Marshal or local authority.

301 *To Relieve Overcrowding.*

302 *To Build Up Population.*

304 *Drug Abuse Program.* (Non-Nara)

305 *Other.*

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APPENDIX D

The Bureau of Prisons Policy Statement No. 7300.65, on Designation of Institutions for Confinement of Federal Prisoners, dated March 22, 1972, provides in relevant part:

1. *PURPOSE.* This statement establishes the guidelines for the United States Marshal's Service in designating appropriate institutions for individuals convicted of violating the laws of the United States.

2. *POLICY.* The program of classification of prisoners is based upon the following statement of policy established by Congress (18 U.S.C. 4081):

> "The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions."

The statutes further provide that persons convicted of offenses against the United States shall be committed, for such terms of imprisonment as the court may direct, to the custody of the Attorney General or

his authorized representative, who shall designate the place of confinement where sentence shall be served. The Attorney General may designate any available, suitable and appropriate institution, whether maintained by the Federal Government or otherwise, or whether within or without the judicial district in which the person was convicted (18 U.S.C. 4082).

* * * * *

4. *PROCEDURE.* Designation of institutions for the commitment of Federal prisoners is made by the Director of the Bureau of Prisons under the authority delegated to him by the Attorney General. Specific institutions are designated for particular types of offenders.

A. *Juveniles*: Robert F. Kennedy Youth Center, Morgantown, West Virginia

B. *Females*: Federal Reformatory for Women, Alderson, West Virginia
Federal Correctional Institution, Fort Worth, Texas
Federal Correctional Institution, Terminal Island, California
Robert F. Kennedy Youth Center, Morgantown, West Virginia

C. *Youth and Young Adult Males*, sentenced under the Youth Corrections Act or sentenced under other statutory provisions, who lack previous commitments to adult reformatories or prisons and can reasonably be expected to profit from educational, vocational and other rehabilitation facilities available:

Federal Youth Center, Ashland, Kentucky
Federal Reformatory, El Reno, Oklahoma
Federal Youth Center, Englewood, Colorado
Federal Correctional Institution, Lompoc, California
Federal Correctional Institution, Milan, Michigan
Federal Reformatory, Petersburg, Virginia
Federal Correctional Institution, Seagorville, Texas
Federal Correctional Institution, Tallahassee, Florida

D. *Males*, who, because of age or previous criminal record, are unsuitable for youth institutions or reformatories, but who are not habitual or professional offenders and who still present prospects for rehabilitation through an intensive program of training:

United States Penitentiary, Lewisburg, Pennsylvania
United States Penitentiary, McNeil Island, Washington
United States Penitentiary, Terre Haute, Indiana

E. *Males* with serious criminal records:

United States Penitentiary, Atlanta, Georgia

United States Penitentiary, Leavenworth, Kansas

F. *Males* who are treatable, do not have a serious prior criminal record, require no more than medium custody facilities, and whose sentences may range from a few months to no more than five years:

Federal Correctional Institution, Danbury, Connecticut
Federal Correctional Institution, Fort Worth, Texas
Federal Correctional Institution, LaTuna, Texas
Federal Correctional Institution, Sandstone, Minnesota
Federal Correctional Institution, Terminal Island, California
Federal Correctional Institution, Texarkana, Texas

G. *Males* of minimum custody of trustworthy type in good physical condition with relatively short sentences:

Federal Prison Camp, Allenwood, Pennsylvania
Federal Prison Camp, Eglin Air Force Base, Florida
Federal Prison Camp, Lompoc, California
Federal Prison Camp, McNeil Island, California

Federal Prison Camp, Montgomery, Alabama (Maxwell Air Force Base)
Federal Prison Camp, Marion, Illinois
Federal Prison Camp, Safford, Arizona
Federal Prison Camp, Springfield, Missouri

H. *Males* awaiting trial or serving short jail sentences:

Federal Prison Camp, Florence, Arizona
Federal Detention Headquarters, New York, New York

I. *Males* who require specialized medical or psychiatric treatment which is not available in other Federal institutions:

Medical Center for Federal Prisoners, Springfield, Missouri

5. *CLASSIFICATION OF OFFENDERS.* The types of Federal offenders, for purposes of the designation charts, are classified as follows:

A. *Juvenile and Youth Offenders*

A-1. Juveniles include all persons (1) committed under the Juvenile Delinquency Act (Title 18, U.S. Code, Section 5034), (2) all other committed persons who have not yet reached their eighteenth birthday.

A-2. Youth offenders include all persons committed under the Youth Corrections Act (Title 18, U.S. Code, Section 5010(b), 5010(c)).

A-3. All persons under 24 years of age who do not come within either A-1 or A-2 classification. Persons in this age group include those committed for observation and study under Title 18, U.S. Code, Section 5034 and 5010(e), and those under 24 years of age committed under Title 18, U.S. Code, Section 4208(b), Title II of NARA, Sections 4252 and 4253, and 4244 and 4246.

B. *Females*

B-1. Females with a term of less than 90 days to serve.

B-2. Females with a term of more than 90 days to serve.

B-3. Females committed for observation and study under Title 18, U.S. Code, Section 5010 (e), 4208(b), 5034, 4244, 4246, and Title II of NARA, Sections 4252 and 4253.

C. *Males—One year and one day sentence or less*

C-1. Males considered trustworthy, with no record of escape, no detainers (with the exception of deportation), no record of sex crimes, and good physical condition.

C-2. Males who do not qualify under C-1.

D. *Males—More than one year and one day sentence*

D-1. Males 24 years of age and over who are considered to be good prospects for rehabilitation. Exclude men who have already served more than two terms longer than one year in adult institutions, and men with sentences longer than ten years.

D-2. Males 24 years of age and over who do not qualify under D-1, but are still considered good prospects for rehabilitation. Initially they may be considered moderate security risks.

D-3. Males considered habitual or professional criminals. Also those considered serious escape risks and who require close control and supervision. Ordinarily, this category will only include men age 30 and over.

E. *Selective Service Act Violators.* Males who have violated the Selective Service Act Law. This includes those whose actions are not necessarily religiously motivated.

6. *SPECIAL DESIGNATIONS.* The following should be referred to the Bureau of Prisons for special designation.

• • • •

A. All offenders committed under the Federal Juvenile Delinquency Act (Title 18, U.S. Code, Section 5034).

B. All persons committed for study and observation (Title 18, U.S. Code, Sections 4208(b), 5010(e), 5034, and Title II of NARA, Sections 4252 and 4253.

C. All serious medical and psychiatric problems.
D. All commitments under Title 18, U.S. Code, Section 4244 and 4246.
E. Offenders for whom the Court or the U.S. Attorney have recommended a specific institution.
F. Offenders who should be separated from others or for some other substantial reason should not be placed in the institution specified in the designation chart.
G. Notorious or greatly publicized offenders.
H. Any person about whom there is doubt as to proper designation.
I. All violators of post-release supervision, I.E., Parole Violators and Mandatory Release Violators. (Notify U.S. Board of Parole, Adult Board or Youth Corrections Division, pursuant to the long standing instructions of the Board.)

When a special designation is requested, presentence reports should be forwarded to the Bureau of Prisons and/or the institution designated in accordance with the procedures established in the particular judicial district. Special designations should be coordinated with the local probation office as to eliminate duplication in requesting special designation.

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APPENDIX E

The Bureau of Prisons Policy Statement No. 7400.5C, on Inmate Discipline, dated October 4, 1974, provides in relevant part:

1. *PURPOSE.* This statement of policy is to assure that inmate discipline and control are fully consonant with the correctional objectives of the institution, the focus being on (a) individual inmate adjustment to the programs, behavior standards, and limitations necessarily imposed by the administration; (b) the general welfare and safety of the institutional community; and, (c) the incorporation of due process standards for inmate disciplinary hearings as prescribed by the Supreme Court in *Wolff* v. *McDonnell*, —— U.S. ——, 94 Ct. 2963, —— L.Ed 2d —— (1974).

* * * *

3. *POLICY.* It is the policy of the Federal Bureau of Prisons to maintain an institutional climate in all of its facilities so that every inmate may complete his term of confinement with a minimum of corrosive effect and a maximum gain in his ability to more adequately maintain a successful community adjustment following release. In order that the majority of inmates might live in a safe and orderly environment, it is necessary that those individuals whose behavior is in noncompliance with institution rules be brought to the attention of the appropriate authorities.

Disciplinary action is but one factor in correctional treatment and control. There are other individualized correctional programs and goals that shall be given consideration by the administration. The objective of this approach is the future voluntary acceptance of institution regulations which are required for the general welfare of the institution community and serve as an aid to law-abiding behavior following release.

4. *ACTION.* A single Institution Discipline Committee will be established in each Bureau of Prisons Institution. The Committee will be composed of at least three (3) members, of whom two (2) will be of department head level or above; the Chairman will be of the level of department head or above. This requirement as to the level of members will not apply to Community Treatment Centers or Camps.

The Chief Executive Officer of each institution will delegate to the Institution Discipline Committee the authority to order an inmate placed or retained in disciplinary segregation, to order the withholding or forfeiture of good time, and to order an inmate transferred for disciplinary reasons. The authority to impose sanctions other than disciplinary segregation, withholding or forfeiture of good time and transfer for disciplinary reasons will be lodged in such person or persons as the Chief Executive Officer may direct. Where the institution has a unit management system, the authority to impose these lesser

sanctions will be delegated to staff members in the inmate's unit.

Each institution having the need for facilities to house inmates separate from the general population will establish special housing units consisting of two types: Administrative Detention and Disciplinary Segregation.

An inmate may be placed in Administrative Detention where his attitude and conduct indicate that his continued presence in the general population poses a serious threat to life, property, himself, staff, other inmates or the security of the institution, and where the inmate:

(a) Is pending a hearing for violation of institution rules or regulations;
(b) Is pending an investigation of a violation of institution rules or regulations;
(c) Is pending investigation or trial for a criminal act;
(d) Requests admission to the administrative detention area for his own protection; or
(e) Is in holdover status during transfer;
(f) Pending classification.

An inmate may be placed in disciplinary segregation where his continued presence in the general population poses a serious threat to himself, staff, or other inmates or to the security of the institution and where the Institution Discipline Committee directs following a hearing conducted in accordance with

the limited due process requirements as outlined in paragraph 9 of this policy statement in which the inmate has been found to have committed a serious violation of institution rules or regulations.

5. *GENERAL PRINCIPLES.* The following general principles shall be applicable in every disciplinary action taken:

(a) Disciplinary action shall be taken at such times and in such measures and degree as is necessary to regulate an inmate's behavior within acceptable limits;

(b) Inmate behavior shall be controlled in a completely impartial and consistent manner;

(c) Disciplinary action shall not be capricious, retaliatory, or for the purpose of revenge.

(d) Corporal punishment of any kind is strictly prohibited.

(e) Accurate, detailed reports of disciplinary actions shall be maintained in accordance with the requirements of this policy statement.

6. *INFORMATION TO INMATES.* Each inmate is to be advised in writing at the time of arrival at an institution of:

(a) His rights and responsibilities;

(b) Acts prohibited in the institution;

(c) The types of disciplinary action which may be taken; and

(d) The disciplinary system within the institution.

This information will be provided in booklet or pamphlet form as part of the admission orientation program. A signed receipt will be obtained from each inmate acknowledging that he has received a copy of the booklet or pamphlet.

(e) *Rights and Responsibilities*

RIGHTS	RESPONSIBILITIES
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility to not waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with the facility rules and schedules. You also have a	5. It is your responsibility to conduct yourself properly during visits, to not accept or pass contraband, and to not violate the law through your correspondence.

RIGHTS	RESPONSIBILITIES
right to uncensored and uninspected out going correspondence with members of the news media through the Prisoners' Mail Box System. Letters forwarded to the news media through PMB are subject to the regulations of that System.	
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and to conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the material.
9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the publishers.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training, and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.

(f) *Prohibited Acts in Federal Penal and Correctional Institutions*

001	Killing
002	Assaulting any person
003	Fighting with another person
004	Threatening another with bodily harm, or with any offense against his person or his property
005	Extortion, blackmail, protection: demanding or receiving money or any thing of value in return for protection against others, to avoid bodily harm, or under threat of informing
051	Engaging in sexual acts with others
052	Making sexual proposals or threats to another
053	Indecent exposure
101	Escape
102	Attempting or planning escape
103	Wearing a disguise or mask
151	Setting a fire
152	Destroying, altering, or damaging government property, or the property of another person
153	Stealing (theft)
154	Tampering with or blocking any locking device
155	Adulteration of any food or drink
201	Possession or introduction of an explosive or any ammunition
202	Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool
203	Possession, introduction, or use of any narcotics, narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical staff
204	Misuse of authorized medication
205	Possession of money or currency, unless specifically authorized
206	Possession of property belonging to another person
207	Loaning of property or anything of value for profit or increased return

208 Possession of any thing not authorized for retention or receipt by the inmate, and not issued to him through regular institutional channels
209 Possessing any officer's or staff clothing
210 Possessing unauthorized clothing
211 Mutilating or altering clothing issued by the government

251 Rioting
252 Encouraging others to riot
253 Engaging in, or encouraging, a group demonstration
254 Refusing to work, or to accept a program assignment
255 Encouraging others to refuse to work or participate in work stoppage
256 Refusing to obey an order of any staff member
257 Violating a condition of furlough

301 Unexcused absence from work, or any assignment
302 Malingering, feigning an illness
303 Failing to perform work as instructed by a supervisor
304 Insolence towards a staff member
305 Lying or providing a false statement to a staff member
306 Conduct which disrupts or interferes with the security or orderly running of the institution

351 Counterfeiting, forging, or unauthorized reproduction of any document, article or identification, money, security, or official paper

401 Participating in an unauthorized meeting or gathering
402 Being in an unauthorized area

451 Failure to follow safety or sanitation regulations
452 Using any equipment or machinery which is not specifically authorized
453 Using any equipment or machinery contrary to instructions or posted safety standards

501 Failing to stand count
502 Interfering with the taking of count

551 Making intoxicants
552 Being intoxicated
553 Smoking where prohibited
554 Using abusive or obscene language

601 Gambling
602 Preparing or conducting a gambling pool
603 Possession of gambling paraphernalia

651 Being unsanitary or untidy: failing to keep one's person and one's quarters in accordance with posted standards
652 Tattooing or self-mutilation

701 Unauthorized use of mail or telephone
702 Unauthorized contacts with the public
703 Correspondence or conduct with a visitor in violation of posted regulations

751 Giving or offering any official or staff member a bribe, or any thing of value
752 Giving money or any thing of value to, or accepting money or any thing of value from; another inmate, a member of his family, or his friend

801 Attempting to commit any of the above offenses, aiding another person to commit any of the above offenses, and making plans to commit any of the above offenses shall be considered the same as a commission of the offense itself

7. *INCIDENT REPORT AND INVESTIGATION.*

(a) *Incident Report*: Informal resolution of incidents involving violations of institution rules or regulations is encouraged. However, where an employee witnesses or has a reasonable belief that a violation of institution rules or regulations has been committed by an inmate, and where the employee deems that informal resolution of the incident is unwarranted, the employee shall prepare an incident report and forward it to the appropriate correctional supervisor. The appropriate correctional supervisor may in-

formally dispose of the incident report or forward the incident report for further disposition consistent with this policy statement.

The reporting employee should complete Part 1 of the incident report immediately. The incident is to be one of the Prohibited Acts listed in paragraph 6(f) of this policy statement. The entire language of the Prohibited Act(s) does not have to be copied. Only the relevant portion need be used. For example, "Destroying Government Property, Code No. 152," "Possessing narcotics, Code No. 801" would be acceptable listing for appropriate charges.

The description of the incident should contain the details of the activity which is being reported. All facts about the incident which are known by the employee should be recorded. If there is anything unusual about the inmate's behavior, this should be noted. The reporting employee should also list any staff or inmate witnesses to the incident, and the disposition of any physical evidence (weapons, property, and etc.) which the employee may have personally handled. The reporting employee will sign the report and indicate his title in the appropriate blocks. The incident report should then be forwarded to the appropriate correctional supervisor for disposition.

(b) *Investigation*: The investigation should be conducted within 24 hours of appointment of the investigator, unless circumstances beyond the control of the investigator intervene. The investigating officer should ordinarily be an employee of supervisory level and may not be the employee reporting the particular incident in question. Where it appears likely that the incident may be the subject of a criminal prosecution, investigation should be suspended and the inmate should not be questioned until the FBI interviews have been completed. (See Policy Statement 2200.1.)

Ordinarily, an inmate will be given a copy of the incident report by the investigating officer at the beginning of the investigation. If the investigation is delayed for any reason, any employee may deliver the charges to the inmate. The date and time the inmate receives a copy of the Incident Report will be noted. This should be done within eight (8) hours from the time the investigator received his assignment, unless there are exceptional circumstances which prevent it. The investigator should also read the charges to the inmate and obtain his statement concerning the incident, except as provided above. Comment about the inmate's attitude may be included here.

The investigator should then thoroughly investigate the incident. He should talk to witnesses, and summarize their statements. The disposition of evidence should be recorded. Often, he will want to talk to the reporting employee to obtain his report first hand and to clarify any questions the investigator may have. All steps and actions taken should be recorded on the incident report.

Under Comments and Conclusions, the investigator may include his comments on the inmate's prior record and behavior, his analysis of any conflicts between witnesses, and his conclusions of what in fact happened. The inmate does not receive a copy of the investigation. However, should the case ultimately be forwarded to the Institution Discipline Committee, the investigation should be given to the inmate's staff representative for use in presentation on the inmate's behalf.

8. *MINOR DISPOSITIONS.* The Chief Executive Officer of each institution shall delegate to such persons he selects the authority to impose minor dispositions and sanctions for violations of institution rules or regulations. Where the institution has a unit management system, the authority to impose minor dispositions and sanctions shall be delegated to staff members of an

inmate's unit. Minor dispositions and sanctions are those actions imposed for violation of institution rules or regulations other than segregation, withholding or forfeiture of good time, and transfer for disciplinary reasons. While the process by which minor dispositions are imposed is left to the discretion of the Chief Executive Officer of each institution, the following minimum standards will apply throughout the Bureau of Prisons:

(a) Each inmate charged with violating an institution rule or regulation shall be given a written copy of the charge or charges against him within 24 hours of the infraction.

(b) Each inmate so charged will be entitled to a hearing held within 48 hours (excluding weekends and holidays) of the incident to consider the charge brought against him.

(c) The inmate will be entitled to be present at the hearing except during deliberations of the decision maker and where institutional security would be jeopardized. The reasons for excluding an inmate from the hearing must be well documented in the record.

(d) The inmate will be afforded the opportunity to make a statement and to present documentary evidence in his own behalf.

(e) The inmate will be given a written copy of the decision and disposition. Review of any action taken as a minor disposition will be

pursuant to the Administrative Remedy Procedure, Policy Statement 2001.6A.

(f) Where an alleged violation of institution rules or regulations warrants consideration for other than minor sanction, the charge may be referred to the Institution Discipline Committee for hearing and disposition. Copies of all relevant documents should be forwarded to the Chairman of the Institution Discipline Committee with a brief statement of reasons for the referral along with any recommendation for appropriate disposition should the inmate be found to have committed the act charged.

(g) When charges are to be referred to the Institution Discipline Committee, the inmate shall be advised of the rights afforded at a hearing before the Instiution Discipline Committee. He shall be asked to indicate his choice of staff representative and the names of any witnesses he wishes to be called to testify on his behalf at the hearing. (A sample form that may be used for this purpose is attached to this policy statement. Time limits imposed in this section may be extended for good cause.)

(h) Where the person or persons delegated the authority to impose minor dispositions determines that the inmate is innocent of committing any prohibited act, the inmate's file

shall be expunged of the incident report lodged against him.

9. *INSTITUTION DISCIPLINE COMMITTEE.*

(a) *Composition*: The Chief Executive Officer may appoint as many members to the Institution Discipline Committee as he deems appropriate. No fewer than three members, including the Chairman, must be present at any hearing to constitute a quorum. The Chairman and no less than one member present at the hearing will be of the department head level or higher. The third member of the Committee need not be of department head level. For the purposes of this section, "department head" includes acting department head. This requirement as to the level of staff members and Chairman will not apply to Community Treatment Centers or Camps. In order to insure impartiality, a staff member may not sit as a member of the Institution Discipline Committee if he reported or investigated the incident of rules infraction being considered. Ordinarily a staff member witnessing an incident under consideration should not sit as a member of the Institution Discipline Committee. However, a staff member witnessing an incident may sit as a member of the Institution Discipline Committee where the incident is so widely witnessed that vir-

tually every staff member has witnessed it in whole or part. Likewise, a staff member may not sit as a member of the Institution Discipline Committee if he played any significant part in having the charges referred to the Institution Discipline Committee for consideration. The Chief Executive Officer should appoint members to this Committee who are broadly representative of the primary areas of institutional administration and who are fully knowledgeable of the requirements of this policy statement and of the functions of Inmate Discipline.

(b) *Functions*: The Institution Discipline Committee shall conduct hearings, make findings, and may impose appropriate sanctions on incidents of inmate misconduct referred to it for disposition in accordance with the due process standard as listed below. While this Committee may impose any lesser sanctions available, only this Committee will have the authority to order: (1) an inmate placed in disciplinary segregation, (2) an inmate's good time withheld or forfeited, or (3) an inmate transferred to another institution for disciplinary reasons. This Committee will also conduct reviews of inmates placed in disciplinary segregation in accordance with requirements listed below.

(c) *Procedural Requirements*: An inmate may not be placed in disciplinary segregation, or

have his good time withheld or forfeited, or be transferred to another institution for disciplinary reasons unless there has been a fact-finding hearing before the Institution Discipline Committee in which the following procedures have been satisfied:

(1) An inmate will be given advance written notice of the charge(s) against him no less than 24 hours before his appearance before the Institution Discipline Committee. An inmate may waive in writing this 24 hour notice requirement.

(2) An inmate will be provided the service of a full-time staff member to represent him at the hearing before the Institution Discipline Committee should he so desire. The Chairman shall arrange for the presence of a selected staff representative. If the staff member selected declines or is unavailable because of absence from the institution, the inmate should be given the options of selecting another representative, or in the case of an absent staff member, of waiting a reasonable period for his return, or continuing the hearing without a staff representative. A staff representative should be given adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that

a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the Chairman of the Institution Discipline Committee.

(3) An inmate will be permitted to have witnesses called and to present documents in his behalf, provided the calling of witnesses or the disclosure of documentary evidence would not jeopardize or threaten institutional security. The Chairman will call those witnesses he deems reasonably available and necessary for an appreciation of the circumstances surrounding the charge. Repetitive witnesses need not be called. Unavailable witnesses may be asked to submit written statements. Reasons for declining to call requested witnesses will be documented in the Committee's report. Witnesses requested by the inmate who are called should be questioned by his staff representative or where staff representation has been waived, by members of the Committee. Inmates who have waived the services of a staff representative may submit questions for requested witnesses in writing to the Committee.

(4) The Institution Discipline Committee will prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision, the specific evidence relied on by the Committee, and a brief statement of the reasons for the sanctions imposed. The evidence relied upon for the decision and the reasons for the actions taken should be set out in specific terms unless doing so would jeopardize institutional security. (A sample form that may be used to advise an inmate of his rights at an Institution Discipline Committee hearing is attached to this policy statement.)

(5) An inmate will be permitted to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee and except where institutional security would be jeopardized. The reasons for excluding an inmate from the hearing must be well documented in the record. A hearing may be conducted in the absence of an inmate where the inmate refuses to appear and he can not be brought to the hearing without the use of force. When an inmate escapes from

custody, the Institution Discipline Committee will conduct a hearing in the inmate's absence at the institution from which the escape occurred. When an inmate who has had sanctions imposed (such as loss of good time) while absent from custody, returns to custody, he will be advised of his right to have the escape charge brought before the Institution Discipline Committee at the institution where he returned to custody. All the procedural requirements of Institution Discipline Committee hearings will apply to this rehearing except written statements of witnesses not readily available may be liberally used instead of live witnesses. The Institution Discipline Committee, upon rehearing, may dismiss the charge, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(d) *Dispositions of the Institution Discipline Committee*: The Institution Discipline Committee shall have available a broad range of sanctions and dispositions. These dispositions and sanctions will include the following:

The Institution Discipline Committee may

(1) Dismiss any charge(s) before it where appropriate and shall order the record of charges expunged where the inmate has been determined innocent of the charge(s).

(2) Impose sanctions and dispositions available to the person or persons designated to impose minor dispositions.

(3) Direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this policy statement.

(4) Direct that an inmate's good time be withheld. Withholding of good time should be limited to misconduct or offenses; it should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding shall be limited to the good time creditable for the single month during which the violation occurs. (Some offenses, such as refusal to work at an assignment, may be recurring, and thus may permit consecutive withholding actions.) Withheld good time may be considered for restoration at any time.

(5) Direct that an inmate's good time be forfeited. The good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense

for which forfeiture action is taken, by the applicable monthly rate specified in 18 United States Code, Section 4161 (less any previous forfeiture or withholding outstanding), plus extra good time which may have been earned to the date of the offense. All or part of an inmate's accumulated good time may be forfeited. Authority to restore all types of forfeited and withheld good time is delegated to the Institution Discipline Committee of each institution. Forfeited good time may be considered for restoration at any time.

(6) Direct that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, an inmate may be transferred prior to an Institution Discipline Committee hearing. However, a hearing before the Institution Discipline Committee at the receiving institution must be conducted as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. Transfers for disciplinary reasons prior to a hearing before the Institution Discipline Committee are to be used only in emergency situations

and only with the approval of the receiving Regional Director. However, when an inmate is transferred under these circumstances, the sending institution will forward copies of incident reports with completed investigation to the receiving institution for purposes of the hearing before the receiving institution's Institution Discipline Committee. All procedural requirements applicable to Institution Discipline Committee hearings contained in paragraph 9(c) of this policy statement will be utilized, except written statements of unavailable witnesses may be liberally accepted instead of live testimony.

(7) Suspend the execution of any sanction it imposes.

(e) *Criminal Prosecutions*: Where an inmate's misconduct may also be the subject of a criminal prosecution, it is not necessary to await the outcome of the criminal trial before taking the disciplinary action, especially if there is reason to believe there will be a long delay before the trial is held. An inmate under investigation of the FBI or other law enforcement officers for an offense committed in the institution may not be questioned about the charge until the FBI interviews are completed. An inmate who is the subject of criminal prosecution for

institutional violations will not be transferred from the jurisdiction of the trial court without the consent of the appropriate United States Attorney or the Court in which the trial is pending.

10. *APPEALS FROM INSTITUTION DISCIPLINEE COMMITTEE ACTIONS.* At the time the Institution Discipline Committee gives an inmate notice of its decision, the Committee will also advise the inmate that he may appeal the Committee's decision to the Chief Executive Officer. Appeals must be filed no later than thirty (30) days after notice of the decision. This time limit may be extended for good cause shown.

An inmate wishing to appeal any disciplinary action imposed as a result of a hearing before the Institution Discipline Committee must use the procedures and forms provided for by Policy Statement 2001.6A (Administrative Remedy of Complaints Initiated by Offenders in Bureau of Prisons Facilities). The Chief Executive Officer may approve, modify, or reverse any disciplinary action of the Institution Discipline Committee as he deems appropriate. This authority may not be delegated. The Chief Executive Officer may not increase the amount of forfeiture imposed.

An inmate may appeal an adverse decision of the Chief Executive Officer through the appeal procedures contained in Policy Statement 2001.6A to the appropriate Regional Director. Appeals to the Regional Director from adverse decisions from the Chief Executive Officer must be filed no later than thirty (30) days from the date of the Chief Executive Officer's decision.

Additionally, appeals of adverse decision from the Regional Director may be made to the Assistant Director, General Counsel and Review within thirty (30) days of the decision from the Regional Director.

On appeal the following factors will be considered:

(a) Was there substantial compliance with the Policy Statement on Inmate Discipline?

(b) Was the decision of the Institution Discipline Committee based on substantial evidence?

(c) Under the circumstances, was the sanction imposed disproportionate to the offense?

11. *SPECIAL HOUSING UNITS.* Each institution having the need for facilities to house inmates separate from the general population will establish special housing units consisting of two types: Administrative Detention and Disciplinary Segregation. (Some institutions may also have a facility for long-term control unit programs—see Policy Statement 7300.80.) Special Housing Units will be maintained in accordance with the policies and procedures contained in this policy statement.

(a) *Administrative Detention*: Administrative Detention is the status of confinement which

results in a loss of some privileges which the inmate would have if assigned to the general population. Administrative Detention is to be used only where the continued presence of the inmate in general population poses a serious threat to life, property, himself, other inmates, staff members or the security of the institution.

(1) *Placement in Administrative Detention*: An inmate may be placed in Administrative Detention by persons designated by the Chief Executive Officer. These persons may be correctional supervisors, shift supervisors or members of an inmate's unit or team. An inmate may be placed in Administrative Detention for any of the following reasons:

a. Pending a hearing for a violation of institution rules or regulations;
b. Pending an investigation of a possible violation of an institution rule, but where charges have yet to be lodged;
c. Pending investigation or trial for crimes committed in the institution;
d. An inmate requests admission to the Administrative Detention area for his own protection;
e. An inmate in holdover status awaiting transfer; or

f. Pending classification.

A memorandum detailing the reason for placing an inmate in Administrative Detention will be prepared and given to members of the inmate's unit or team, with a copy to the Operations Supervisor of the Administrative Detention unit. A copy of this memorandum will also be given to the inmate provided institutional security is not thereby compromised.

(2) *Review of Inmates Housed in Administrative Detention*: The Chief Executive Officer shall designate such person or persons he deems appropriate to review the status of inmates housed in Administrative Detention. Normally the Operations Supervisor of the Administrative Detention unit or members of the inmate's unit or team should be delegated this authority. Initial placement shall be accomplished by means of a memorandum detailing the reasons for this action. Thereafter, the reviewing authority will review the status of each inmate at least once a week. The reviewing authority will formally review each inmate who spends ten (10) continuous days in Administrative Detention, and thereafter such cases will

be formally reviewed at least every 30 days. The inmate shall appear before the reviewing authority at such formal reviews unless the inmate refuses to appear without the use of force. Administrative Detention is to be used only for short periods of time except where an inmate needs long-term protection. An inmate may be kept in Administrative Detention for long-term protection where the need for such protection is well documented. Inmates shall be released when the reason for their initial placement ceases to exist or where their return to general population would no longer pose a serious threat to themselves, to staff or other inmates or the security of the institution.

(3) *Conditions of Administrative Detention*: The basic level of conditions as described below for Disciplinary Segregation will also apply to Administrative Detention. To the extent possible, inmates housed in Administrative Detention will be afforded the same general privileges given to inmates in general population as is consistent with existing resources available and the security needs of the unit. Unless there are compelling reasons to the contrary, in-

stitutions should provide commissary privileges, reasonable amounts of personal property, and exercise periods exceeding those provided for inmates housed in Disciplinary Segregation. Visiting and correspondence privileges of the general population should be given inmates in Administrative Detention.

(b) *Disciplinary Segregation*: Disciplinary Segregation is the status of confinement of an inmate housed in an individual cell either by himself or with other inmates, separated from the general population, as a result of a hearing before the Institution Discipline Committee in which the inmate has been found to have committed a prohibited act. Inmates housed in Disciplinary Segregation will have significantly fewer privileges than those housed in Administrative Detention. Disciplinary Segregation is to be used only where other available dispositions are inadequate to regulate an inmate's behavior within acceptable limits and where the inmate's presence in the general population poses a serious threat to life, property, to himself, staff or other inmates or the security of the institution.

(1) *Placement in Disciplinary Segregation*: An inmate may be placed in Discipli-

nary Segregation only by direction of the Institution Discipline Committee following a hearing in which the inmate has been found to have committed a serious act of misconduct which warrants this serious sanction. Inmates found to have committed serious acts of misconduct should not be placed in Disciplinary Segregation unless their presence in general population would pose a serious threat to staff or other inmates or to the security of the institution.

(2) *Review of Inmates in Disciplinary Segregation*: Inmates placed in Disciplinary Segregation will be reviewed by the Institution Discipline Committee at least once a week on the record. The Committee will formally review the cases of all inmates who spend ten (10) continuous days in Disciplinary Segregation, and thereafter such cases will be formally reviewed at least every thirty (30) days. The inmate shall appear before the Institution Discipline Committee at such formal reviews unless the inmate refuses to appear without the use of force.

There will be a psychiatric or psychological interview when Disciplinary

Segregation continues beyond thirty (30) days. The interview and report should address the inmate's adjustment to his surroundings and the threat the inmate poses to himself, staff and other inmates. A similar psychiatric or psychological interview and report will be made at subsequent two month intervals should segregation continue for this extended period.

An inmate shall be released from Disciplinary Segregation when he no longer poses a threat to himself, or others or to institutional security and when the Institution Discipline Committee determines that continuation in Disciplinary Segregation is no longer necessary to regulate an inmate's behavior within acceptable limits. The time an inmate spends in Disciplinary Segregation must be proportionate to the offense committed, taking into consideration the inmate's prior conduct, his specific program needs, and other relevant factors.

(3) *Conditions of Disciplinary Segregation*:

(a) Basic living levels of decency and humane treatment must be maintained, regardless of the purpose for which a man has been segregated. Privileges may be added,

for the purpose of reinforcing acceptable behavior, to the living conditions of those whose status is purely involuntary, or whose confinement is long-term. These should not result in excessively time-consuming procedures, or neutralize security or shakedown procedures.

(b) When different levels of living arrangements are effected, because of the difference in purpose of segregation, the differential facilities should be separated physically in ways that materials allowed to one person are not passed to others to whom they are not allowed.

(c) A description of basic living levels follows:

1. *Segregation Conditions*: The quarters used for segregation shall be well ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells will be equipped with beds. The beds may be securely fastened to the floor or wall of the cell according to the desires and needs of each individual

institution. Strip cells will not be a part of the Segregation Unit. Any strip cells which will be utilized will be a part of the medical facility and under the supervision and control of the medical staff.

2. *Cell Occupancy*: Except in emergencies, the number of inmates confined to each cell or room shall not exceed the number for which the space was designed. Whenever an emergency arises which indicates that excess occupancy may be temporarily needed, an immediate report shall be made to the head of the institution and his approval obtained.

3. *Clothing and Bedding*: All inmates shall be admitted to segregation dressed in normal institution clothing after a thorough search for contraband but without belt and shall be furnished a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate shall not be segregated without clothing, mattress,

blankets and pillow, except when prescribed by the Medical Officer for medical or psychiatric reasons. If an inmate is so seriously disturbed that he is likely to destroy his clothing or bedding or create a disturbance which would be seriously detrimental to others, the Medical Department shall be notified immediately and a regimen of treatment and control instituted with the concurrence of the Medical Officer.

4. *Food*: As prescribed in existing regulations, segregated inmates shall be fed the normal institution meals on the standard ration and menu of the day for the institution. Disposable utensils may be used when necessary.
5. *Personal Hygiene*: Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene, e.g. toilet tissue, wash basin, tooth brushing, eye glasses, etc. When necessary, for reasons of safety or security, a retrievable kit of toilet articles may be

issued. Each segregated inmate should shave and shower at least two (2) times a week, unless these procedures would present an undue security hazard.

6. *Exercise*: Each segregated inmate shall be permitted no less than two (2) hours exercise each week. Exercise should be provided in two (2), one (1) hour periods, but if circumstances require, one-half hour periods are acceptable if the two (2) hour minimum is maintained. This provision must be carried out unless compelling security or safety reasons dictate otherwise and these shall be documented.
7. *Personal Property*: Personal property will ordinarily be impounded.
8. *Reading Material*: Ordinarily, it may be provided on a circulating basis.
9. *Supervision*: In addition to the direct supervision afforded by the unit officer, each segregated inmate shall be seen daily by a member of the Medical Depart-

ment, and one or more other responsible officer(s) designated in the local policy issuance.

10. *Correspondence and Visits*: Social correspondence privileges shall be continued in segregation unless there exist compelling reasons to the contrary. Every effort will be made to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, the burden of this notification may be placed on the inmate. In respect to legal, religious, and PMB matters, the relevant policy statements should be followed.

* * * * *

SAMPLE

U.S. Department of Justice — Attachment A
Bureau of Prisons

NOTICE OF INSTITUTION DISCIPLINE COMMITTEE HEARING

DATE: .....

TO: ..... Reg. No.: .....

ALLEGED VIOLATION: .....

DATE OF OFFENSE: ..... Code No.: .....

You are being referred to the Institution Discipline Committee for the above charge.

The hearing will be held on: ....., at ..... A.M. P.M., at the following location: .....

You are entitled to have a full-time staff member represent you at the hearing. Please indicate below whether you desire to have a staff representative, and if so, his or her name.

I (do) ... (do not) ... wish to have a staff representative.

If so, the staff representative's name is: .....

.....

You will also have the right to call witnesses at the hearing and to present documentary evidence in your behalf; provided, calling your witnesses will not jeopardize institutional safety. Names of witnesses

you wish to call should be listed below. Briefly state what each proposed witness would be able to testify to:

NAME: ..... , Can Testify to: .....

.....

.....

NAME: ..... , Can Testify to: .....

.....

.....

NAME: ..... , Can Testify to: .....

.....

.....

The Chairman of the Institution Discipline Committee will call those witnesses (Staff or Inmate) who are reasonably available, and who are determined by him to be necessary for an appreciation of the circumstances surrounding the charge. Repetitive witnesses need not be called. Unavailable witnesses may be asked to submit written statements.

If additional space is needed, use the reverse side of this form. Date, sign, and return this form to the Chairman of the Institution Discipline Committee.

DATE: ..... SIGNATURE: .....

BP-IS-114
9/74

U.S. Department of Justice
Bureau of Prisons

Attachment B

INMATE RIGHTS AT INSTITUTION DISCIPLINE COMMITTEE HEARING

As an inmate charged with a violation of institution rules or regulations referred to the Institution Discipline Committee for disposition, you have the following rights:

1. The right to have a written copy of the charge(s) against you at least 24 hours prior to appearing before the Institution Discipline Committee;
2. The right to have a full-time member of the staff who is reasonably available to represent you before the Institution Discipline Committee;
3. The right to call witnesses and present documentary evidence in your behalf, provided institutional safety would not be jeopardized;
4. The right to be present throughout the Institution Discipline Committee hearing except during Committee deliberations and except where institutional safety would be jeopardized;
5. The right to be advised of the Institution Discipline Committee's decision, the facts supporting the Committee's decision, except where institutional safety would be jeopardized, and the Committee's disposition in writing; and,
6. The right to appeal the decision of the Institution Discipline Committee by means of the Ad-

ministrative Remedy Procedure to the Chief Executive Officer (Warden) within 30 days of notice of the Committee's decision and disposition.

I hereby acknowledge that I have been advised of the above rights afforded me at an Institution Discipline Committee hearing.

Signed: _____

_____

(Typed or Printed Name)

_____

(Register No.)

_____

(Date)

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